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BIDEN'S "AMERICA LAST" ENERGY POLICY

During one of President Trump's final weeks in office (Dec. 27 – Jan. 2), the U.S. did not import crude oil from Saudi Arabia for the first time in 35 years, marking newfound American energy independence.¹ Unfortunately, in his first week in office, President Biden undermined America's economy, our energy security and national security and our Canadian confidence in the U.S. as a energy partner with his executive order to cancel the Keystone XL Pipeline.

- The immediate impact of Biden's decision to shut down construction of the Keystone XL pipeline project was that more than 1,000 men and women lost their jobs. Longer term, over 10,000 jobs and \$1.6 billion in gross wages that were planned will now not come to fruition.²
- Ron Berringer, a second-generation pipeline worker from Clarinda, Iowa, was one of those immediately laid off. He said his future looks "gloomy."³
 - As a result of the layoff, he can no longer afford to replace his work truck, and will have to reduce the financial help he sends to his two adult daughters.
- Tyler Noel, from Aberdeen, South Dakota, is another worker fired because of Biden's actions, and finds John Kerry's suggestion that "they can make solar panels" or other renewables hollow.⁴
 - Tyler said, "I'm a foreman. My trade is in labor. The money is so much better running a crew. I wouldn't be anywhere near that doing a wind turbine, which I've never done."
- In addition to the damage to America's job market, Biden's actions have killed jobs in Canada and strained ties with one of our closest allies.
 - Alberta Premier Jason Kenney has called for "proportional economic consequences" and called the decision, "a deeply disturbing precedent for any future projects and collaboration between our two nations."⁵
- Russia and the Organization of the Petroleum Exporting Countries (OPEC), on the other hand, are the beneficiaries financially and politically in their regions. Because of Biden's energy policies Russia has also gained serious political leverage over the European nations that are now more dependent on Russian natural gas.

Unless Biden's moratorium on federal oil and gas leasing are overturned and his plans to ban hydraulic fracking stopped, the U.S. will return to its position of energy dependence weakening our national security and undermining our economy.

- Due to the shale revolution and lifting the ban on oil and gas exports, the U.S. has gone from on oil exported from the Middle East to the world's largest oil and gas producer⁶.
- Banning fracking, as Biden has promised to do, would eliminate 19 million jobs between 2021-2025, according to the U.S. Chamber of Commerce.⁷
- The American Petroleum Institute estimated that banning oil and natural gas development on federal lands would cause nearly 1 million Americans to lose their jobs and that the U.S. would spend \$500 billion importing gas from places like Russia.⁸

Americans are already experiencing the financial burden of Biden's policies as they face skyrocketing gas and energy prices that is helping drive inflation. Rather than take action to lower energy costs, U.S. Energy Secretary Jennifer Granholm doubled down on the Administration's bad decisions by suggesting that the U.S. might consider reinstating the ban on exporting U.S. crude oil which would cause prices to rise even higher.⁹ President Biden's order to release 50 million barrels of oil from the Strategic Petroleum Reserve, the equivalent of about three days supply of gasoline, was more about trying to improve his poll numbers than it was about lowering energy costs.¹⁰

Under Biden's policies, American families will face significantly higher household energy costs this winter and be much more susceptible to cold-related illnesses because they can't afford to keep their homes adequately heated. Higher energy costs mean higher inflation, leaving American families facing higher costs for food, medicine, rent, clothing and other goods and services. President Biden should reverse these poor decisions, streamline the oil and gas development permitting process which will spur U.S. economic growth, create new jobs, lower the cost of living for all Americans and enhance our national security while continuing to lead the world in reduction of green house gas emissions.

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¹ Tobben, Sheela and Lee, Julian. "U.S. Imports No Saudi Crude for First Time in 35 Years". *Bloomberg*. January 6, 2021. <https://www.bloomberg.com/news/articles/2021-01-06/saudi-oil-exports-to-u-s-at-zero-for-first-time-in-35-years>

² Guz, Melissa. "VERIFY: Yes, jobs lost from President Biden canceling Keystone XL Pipeline, but not as many as you think". *WKYC Studios*. January 27, 2021. <https://www.wkyc.com/article/news/verify/verify-yes-thousands-jobs-lost-after-biden-axes-keystone-xl-pipeline-but-not-as-many-as-these-posts-claim/77-8955155e-457d-4fc2-bbd9-35ea8df83ee3> and

"TC Energy Awards More Than \$1.6 billion in American Contracts to Build Keystone XL, Project to Create Over 8,000 Union Jobs in 2021". *TC Energy*. October 28, 2020. [https://www.tcenergy.com/announcements/2020/2020-10-28-tc-energy-awards-more-than-\\$1.6-billion-in-american-contracts-to-build-keystone-xl-project-to-create-over-8000-union-jobs-in-2021/](https://www.tcenergy.com/announcements/2020/2020-10-28-tc-energy-awards-more-than-$1.6-billion-in-american-contracts-to-build-keystone-xl-project-to-create-over-8000-union-jobs-in-2021/)

³ Korte, Cara. "'It makes you want to give up.' Keystone workers feel left behind by Biden executive orders". *CBS News*. February 4, 2021. <https://www.cbsnews.com/news/keystone-xl-pipeline-workers-biden-executive-orders/?ftag=CNM-00-10aab7e&linkId=110721586>

⁴ *Id.*

⁵ Anderson, Drew. "In letter to PM, Kenney calls for consequences or compensation over Keystone XL cancellation". *CBC News*. January 22, 2021. <https://www.cbc.ca/news/canada/calgary/kenney-trudeau-letter-keystone-xl-1.5883751>

⁶ "The U.S. leads global petroleum and natural gas production with record growth in 2018". *U.S. Energy Information Administration*. August 20, 2019. <https://www.eia.gov/todayinenergy/detail.php?id=40973>

⁷ "New Chamber Analysis Quantifies Economic Risks of Proposed Fracking Ban". *U.S. Chamber of Commerce*. December 19, 2019. <https://www.globalenergyinstitute.org/new-chamber-analysis-quantifies-economic-risks-proposed-fracking-ban>

⁸ "New Analysis Shows Ban On Leasing And Development On Federal Lands And Waters Would Threaten U.S. Energy Security, American Jobs And Environmental Progress". *American Petroleum Institute*. September 9, 2020. <https://www.api.org/news-policy-and-issues/news/2020/09/09/ban-on-leasing-and-development-on-federal-lands-and-waters>

⁹ Isakower, Kyle. "Biden's crude export ban could cause more pain at the pump". *The Hill*. November 17, 2021.

<https://thehill.com/opinion/energy-environment/582017-bidens-crude-export-ban-could-cause-more-pain-at-the-pump>

¹⁰ "President Biden Announces Release from the Strategic Petroleum Reserve As Part of Ongoing Efforts to Lower Prices and Address Lack of Supply Around the World". *The White House*. November 23, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/23/president-biden-announces-release-from-the-strategic-petroleum-reserve-as-part-of-ongoing-efforts-to-lower-prices-and-address-lack-of-supply-around-the-world/>

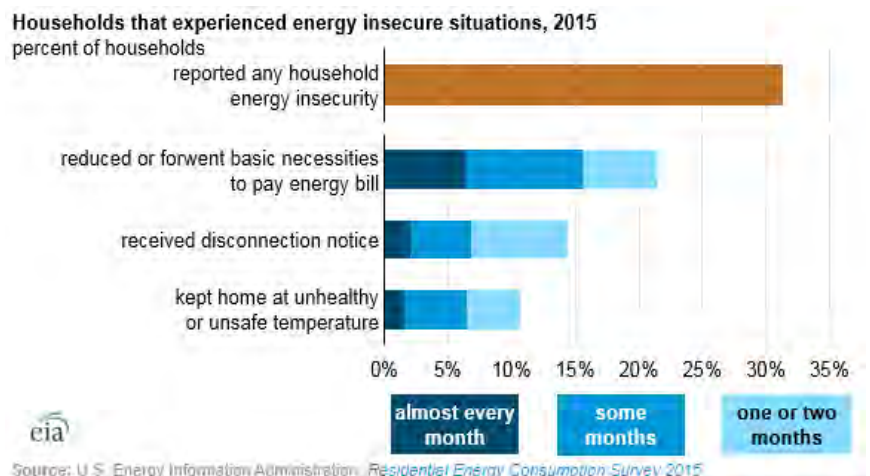


ENERGY POVERTY AND ECONOMIC JUSTICE

Even before President Biden took office, the phrase “environmental justice” was at the heart of his climate plan.¹ Americans soon found out that “environmental justice” meant destroying jobs and increasing energy prices through policies such as canceling the Keystone XL pipeline and stopping new oil and gas leases on federal land.

Although Democrats often mention the importance of “environmental justice,” their energy policies hit the pocketbook and health of low-income families the hardest. These policies have raised overall energy costs, including gasoline that has driven an increase in broader consumer prices and led to thousands of Americans in the energy sector being out of work.² If California is any example, Americans can expect this “energy injustice” to rise if Biden Administration continues pursuing an “America Last” energy policy.

- **Minorities and Low-Income families disproportionately carry the burden of bad energy policies.**
 - While the U.S. does not lack access to energy supplies like many other parts of the world, over 30 million households face a high energy burden, which is defined as spending more than 6% of one’s income on energy bills.³ Also, according to the U.S. Energy Information Administration’s (EIA) latest energy consumption survey, nearly one-third of U.S. households had difficulty paying energy bills or maintaining adequate heating and air.⁴
 - One study found that Black households spend 43% more and Hispanic households 20% more on their energy bills than White households. Furthermore, low-income households dedicate three times more of their income to energy bills than other households.⁵
- **Unaffordable energy prices can have detrimental consequences to health and safety.**
 - When the United Kingdom decided to shut down coal power plants and replace them with wind and solar energy sources, energy prices skyrocketed to unaffordable rates. Consequently, energy poverty increased, and the U.K. had nearly 17,000 excess winter deaths attributable to cold housing conditions in the winter of 2017/18.⁶ If the U.S. were to enact proportional measures, those deaths would number in the tens of thousands.⁷
 - One study found that excess winter deaths kill more residents in Vermont than car crashes.⁸
 - As shown in Figure 1, high energy prices lead families to make decisions detrimental to their health and safety. This is a direct result of government restrictions on free market energy innovation.
 - COVID-19 has presented even more challenges for low-income Americans with 22% of households reporting they had to reduce or forgo basic needs, such as food or medicine, to pay an energy bill.⁹
 - EIA forecasts energy bills this winter will increase for those using propane by 46%, for natural gas by 29%, for electricity by 6%, and for heating oil by 39% from last winter.¹⁰
 - Numerous studies have found that households facing energy poverty or energy insecurity are more



likely to face poor physical and mental health, ranging from asthma and chronic bronchitis to depression and anxiety.¹¹ In addition, children growing up in energy poverty could be even more vulnerable than adults to these health impacts, since very young children spend more time indoors.¹²

- Living without energy can also lead to more severe outcomes such as going hungry from food spoilage when refrigeration is inadequate, house fires when resorting to candles or other fire sources for heat and light, or even fatalities for the young and elderly from either hypothermia or heat waves.¹³
- The best way to protect low-income households and minorities from the outcomes of energy poverty is to enact policies that allow access to reliable and affordable energy.

- **Democrats' policies will lead to spiraling costs and higher rates of energy poverty and injustice.**

- California, where Democrat policies like high fuel-taxes, Cap-and-Trade Program, and Low Carbon Fuel Standard have been implemented, leads the country in highest gasoline prices, which are currently over a dollar more per gallon than the national average.¹⁴
- In addition to fuel prices, California has one of the highest residential electricity rates.¹⁵ This is particularly alarming since cost increases for residential electricity also have the most regressive impact on the poor compared to other basic needs.¹⁶
- In addition to high fuel and electricity prices, the building energy codes in California have regressive impacts. In a National Bureau of Economic Research study, the stricter energy codes were found to hurt the home values of the poor, while increasing the home values of wealthier households. Despite the justification of the codes to reduce energy use, the study says there is debate about whether the codes reduce energy consumption at all.¹⁷
- These policies are why a coalition of civil-rights leaders called The Two Hundred sued the California Air Resources Board for enacting policies that were “driving up the cost of housing, worsening poverty and particularly victimizing minority communities.”¹⁸
- Enacting these terrible policies at the federal level will only further inflict “energy injustice” on to more American families.

Any energy policy that needlessly raises prices on families under the guise of “environmental justice” is hypocritical and destructive. Therefore, it is important for Congress to reject Biden’s energy policies that put American’s out of work and raise the energy burden on families. Instead, we should enact policies that lead to domestic economic opportunities and increase access to reliable and affordable energy for all Americans.

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¹ Juliet Eilperin, Brady Dennis, and Darryl Fears. Biden to place environmental justice at center of sweeping climate plan. The Washington Post. January 27, 2021. <https://www.washingtonpost.com/climate-environment/2021/01/26/biden-environmental-justice-climate/> and Biden/Harris. The Biden Plan for a Clean Energy Revolution and Environmental Justice. <https://joebiden.com/climate-plan/>

² Gwynn Guilford. Inflation Accelerated in March Due to Strengthening Economy, Rising Energy Prices. The Wall Street Journal. April 13, 2021. <https://www.wsj.com/articles/us-inflation-consumer-price-index-march-2021-11618273541> and Jeff Cox. Inflation speeds up in April as consumer prices leap 4.2%, fastest since 2008. CNBC. May 12, 2021. <https://www.cnbc.com/2021/05/12/consumer-price-index-april-2021.html>

³ Ariel Dreihobl, Lauren Ross, and Roxana Ayala. How High are Household Energy Burdens? American Council for an Energy-Efficient Economy. September 2020. <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf> and Access to electricity (% of the population). The World Bank. Accessed December 2021. <https://data.worldbank.org/indicator/EG.ELC.ACCS.ZS>

⁴ One in three U.S. households faces a challenge in meeting energy needs. U.S. Energy Information Administration. September 19, 2018. <https://www.eia.gov/todayinenergy/detail.php?id=37072>

⁵ Ariel Dreihobl, Lauren Ross, and Roxana Ayala. How High are Household Energy Burdens? American Council for an Energy-Efficient Economy. September 2020. <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf>

⁶ 17,000 people in the UK died last winter due to cold housing. E3G. February 15, 2019. <https://www.e3g.org/news/17000-people-in-the-uk-died-last-winter-due-to-cold-housing/>

⁷ E. Calvin Beisner. Fuel Poverty: The Deadly Side of Renewable Energy. Cornwall Alliance. July 16, 2015. <https://cornwallalliance.org/2015/07/fuel-poverty-the-deadly-side-of-renewable-energy/>

⁸ Jonathan Teller-Elsberg, Benjamin Sovacool, Taylor Smith, and Emily Laine. Fuel poverty, excess winter deaths, and energy costs in Vermont: Burdensome for whom? Energy Policy. December 19, 2015. <https://cedmcenter.org/wp-content/uploads/2017/10/Fuel-poverty-excess-winter-deaths-and-energy-costs-in-Vermont-Burdensome-for-whom.pdf>

⁹ David Konisky and Sanya Carley. Survey of Household Energy Insecurity in Time of COVID. O’Neill School of Public and Environmental Affairs at Indiana University. June 10, 2020. <https://oneill.indiana.edu/doc/research/energy-insecurity-survey-june-2020.pdf>

¹⁰ Winter Fuels Outlook, November 2021. U.S. Energy Information Administration. November 9, 2021.

<https://www.eia.gov/outlooks/steo/report/WinterFuels.php>

¹¹ Juli Carrere, Andres Peralta, Laura Oliveras, Maria Jose Lopez, Marc Mari-Dell’Olmo, Joan Benach, and Ana M. Novoa. Energy Poverty, its intensity and health in vulnerable populations in a Southern European city. *Gaceta Sanitaria*. October 29, 2020.

<https://www.sciencedirect.com/science/article/pii/S0213911120301941> and Sefa Awaworyi Churchill and Russell Smyth. Energy poverty and health: Panel data evidence from Australia. *Energy Economics*. May 2021.

<https://www.sciencedirect.com/science/article/pii/S0140988321001249>

¹² Gretta Mohan. Young, poor, and sick: The public health threat of energy poverty for children in Ireland. *Energy Research & Social Science*. January 2021.

<https://www.sciencedirect.com/science/article/abs/pii/S2214629620303972#:~:text=Where%20energy%20poverty%20impacts%20asthma%2C%20this%20may%20also,in%20acute%20settings%20such%20as%20hospital%20emergency%20departments.>

¹³ Cat Carkner. Energy Poverty: A Health and Equity Issue. McGill Policy Association. March 22, 2021.

<https://mcgillpolicyassociation.com/latest-articles/2021/3/22/energy-poverty-a-health-and-equity-issue?rq=energy%20poverty>

¹⁴ State Gas Price averages. AAA Gas Prices. <https://gasprices.aaa.com/state-gas-price-averages/> and Ben Lieberman. California Leads Nation in Gas Prices, Climate Policies a Growing Contributor. Competitive Enterprise Institute. May 31, 2019. <https://cei.org/blog/california-leads-nation-in-gas-prices-climate-policies-a-growing-contributor/> and Gas and Diesel Fuel Update. U.S. Energy Information Administration. Accessed December 3, 2021. <https://www.eia.gov/petroleum/gasdiesel/>

¹⁵ Electric Power Monthly: Table 5.6.A. Average Price of Electricity to Ultimate Customers by End-Use Sector. By State, September 2021 and 2020. U.S. Energy Information Administration. https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_5_6_a

¹⁶ Energy Expenditures by American Families. American Coalition for Clean Coal Electricity. June 2016.

<https://www.americaspower.org/wp-content/uploads/2016/06/Family-Energy-Costs-2016.pdf>

¹⁷ Vanessa Brown Calder. When Environmental Regulation Harms the Poor. Cato Institute. January 31, 2018.

<https://www.cato.org/blog/when-environmental-regulation-harms-poor> and Christopher D. Bruegge, Tatyana Deryugina, and Erica Myers. The Distributional Effects of Building Energy Codes. National Bureau of Economic Research. January 2018.

https://www.nber.org/system/files/working_papers/w24211/w24211.pdf

¹⁸ Susan Shelley. Civil Rights Attorneys Sue over Greenhouse Gas Regs that Affect Housing. *Fox & Hounds*. January 18, 2019.

<https://www.foxandhoundsdaily.com/2019/01/civil-rights-attorneys-sue-over-greenhouse-gas-regs-that-affect-housing/>



THE GREEN NEW DEAL

Congressional Democrats have included many Green New Deal (GND) provisions in their Infrastructure package¹ and the House-passed Build Back Better Act.²

- Bipartisan Infrastructure Package³
 - \$21.5 billion green-energy venture-capital fund administered by the Department of Energy Secretary Jennifer Granholm;
 - \$7.5 billion for electric vehicle (EV) charging stations with a focus on rural and disadvantaged communities, even though these areas have extremely low EV purchases because lower income families and individuals cannot afford to buy EVs; and
 - Gives Secretary Granholm the power to designate “national interest electric transmission corridors” so that federal regulators can overrule state wishes on power lines.
- Build Back Better Act⁴
 - More than \$300 billion in subsidies for unreliable renewables and EVs at a time of record inflation;
 - A natural gas tax that could add up to 30% a year to household energy bills;
 - Billions of dollars for government funded environmental activism in the form of a “Civilian Climate Corps”; and
 - Over \$12 billion in taxpayer money for the wealthy to get rebates for electrifying their homes.

In addition to these provisions, the Democrats continue to push to add other onerous provisions in the GND through legislation and Biden Administration agency actions.

- The GND proposal calls for the U.S. to rely 100 percent on “renewable” energy in just 10 years.⁵ It has 103 cosponsors in the House and 12 cosponsors in the Senate, and calls for free college, guaranteed employment, government run healthcare, and many other non-climate related policies.⁶
- Saikat Chakrabarti, then-Chief of Staff to Rep. Alexandria Ocasio-Cortez, the bill’s sponsor, revealed the true motive of the bill when he said, “[I]t wasn’t originally a climate thing at all...we really think of it as a how-do-you-change-the-entire-economy thing.”⁷
- The GND represents a socialist takeover of America under the facade of climate policy. It would bankrupt America, bankrupt families, and crush the poor, while not having any noticeable impact on global climate change.
- The GND is estimated to cost over \$90 trillion according to separate studies by the American Action Forum⁸ and American Enterprise Institute (AEI).⁹ That puts the GND costing almost four times more than all the goods and services produced in the United States in 2019.¹⁰
- Families can expect to pay between 43 and 286 percent more for electricity under the GND.¹¹ In addition to higher household utility costs, the GND would result in higher long-term inflation causing serious financial hardship for American families.

- Consumers in states with renewable energy mandates paid \$125 billion more for electricity in the seven years after the enactment of those mandates.¹² Forcing all states to implement the same mandates would crush the economy.
- Germany’s misguided GND style Energiewende plan, only resulted in billions of government spending, household energy prices that broke records as some of the highest in the world, and an increase of emissions as coal plants had to be reopened to makeup for the unreliable renewables.¹³
- The drastic increase in energy prices would crush the poor who already pay a disproportionate amount of their income for energy bills. Households that make less than \$30,000 a year spend 23 percent of their income on energy costs, while households that make above \$50,000 spend only 7 percent.¹⁴ The National Black Chamber of Commerce opposes the GND due to the disparate negative impact it would have on minorities.¹⁵
- Even if the GND were fully implemented, it would have no noticeable impact on global temperatures. The difference in current temperatures and those in 2100 would be 0.173°C—virtually nothing.¹⁶

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¹ Infrastructure Investment and Jobs Act, Pub.L. 117-58 (Nov. 15, 2021)

² Build Back Better Act, H.R. 5376, <https://www.congress.gov/117/bills/hr5376/generated/BILLS-117hr5376rh.html>

³ The Editorial Board. “Green New Deal, Part I”. *The Wall Street Journal*. August 4, 2021. https://www.wsj.com/articles/green-new-deal-part-i-senate-infrastructure-bill-joe-biden-jennifer-granholm-11628106419?mod=opinion_lead_pos3

⁴ America First Policy Institute. “Save America (and American Energy), Kill the Bill”. October 29, 2021. <https://americafirstpolicy.com/latest/save-america-and-american-energy-kill-the-bill>

⁵ H.Res.332, Recognizing the duty of the Federal Government to create a Green New Deal (2021).

⁶ *Id.*

⁷ Washington Examiner, “AOC Chief of Staff Confirms: Green New Deal Was Not Really About the Climate,” July 11, 2019, <https://www.washingtonexaminer.com/news/aoc-chief-of-staff-confirms-green-new-deal-was-not-really-about-the-climate>

⁸ American Action Forum, *The Green New Deal: Scope, Scale, and Implications*, Feb. 25, 2019, <https://www.americanactionforum.org/research/the-green-new-deal-scope-scale-and-implications/>

⁹ American Enterprise Institute, *The Green New Deal: Economics and Policy Analytics*, Mar. 26, 2019, <https://www.aei.org/spotlights/the-green-new-deal-economics-and-policy-analytics/>

¹⁰ Bureau of Economic Analysis, *Gross Domestic Product, Fourth Quarter and Year 2019 (Third Estimate); Corporate Profits, Fourth Quarter and Year 2019*, Mar. 26, 2019, <https://www.bea.gov/news/2020/gross-domestic-product-fourth-quarter-and-year-2019-third-estimate-corporate-profits>

¹¹ American Action Forum, *What it Costs to Go 100 Percent Renewable*, Jan. 25, 2019, <https://www.americanactionforum.org/research/what-it-costs-go-100-percent-renewable/>

¹² Energy Policy Institute at the University of Chicago, “Do Renewable Portfolio Standards Deliver?” May 2019, <https://epic.uchicago.edu/wp-content/uploads/2019/07/Do-Renewable-Portfolio-Standards-Deliver.pdf>

¹³ Simmons, Randy and Smith, Josh. “Germany shows how shifting to renewable energy can backfire”. *The Hill*. January 17, 2018. <https://thehill.com/opinion/energy-environment/369386-germany-shows-how-shifting-to-renewable-energy-can-backfire>

¹⁴ American Coalition for Clean Coal Electricity, *Energy Cost Impacts on American Families*, June 2015, <http://www.americaspower.org/wp-content/uploads/2015/09/download-our-new-report.pdf>. Additionally, the AFL-CIO, United Mine Workers of America, and the International Brotherhood of Electrical Workers have opposed the Green New Deal. Washington Post, *AFL-CIO criticizes Green New Deal, calling it ‘not achievable or realistic’*, (Mar. 12, 2019), https://www.washingtonpost.com/politics/afl-cio-criticizes-green-new-deal-calling-it-not-achievable-or-realistic/2019/03/12/842784fe-44dd-11e9-aaf8-4512a6fe3439_story.html?utm_term=.c98a6e25ce6f

¹⁵ National Black Chamber of Commerce, “Green New Deal – Wisdom of the New Democratic Party,” Feb. 12, 2019, <https://www.nationalbcc.org/news/beyond-the-rhetoric/3572-green-new-deal-wisdom-of-the-new-democratic-party>

¹⁶ Benjamin Zycher, American Enterprise Institute, *The Green New Deal: Economics and Policy Analytics* (2019). Additionally, the U.S. achieved the largest reduction of carbon emissions of any country in 2019, while emissions increased in China and India by 21 percent. International Energy Agency, *Global CO2 emissions in 2019*, International Energy Agency, (Feb. 11, 2020) <https://www.iea.org/articles/global-co2-emissions-in-2019>.



EXTREME WEATHER

- After extreme weather events, climate alarmists try to connect climate change to the event and its damage. Despite the claims of Democrats and the media, science does not support the claim that “climate change” is increasing the frequency or intensity of weather events.
- There is no evidence for human activity causing more hurricanes or floods.
 - According to the Intergovernmental Panel on Climate Change, “[c]urrent datasets indicate no significant observed trends in global tropical cyclone frequency over the past century and it remains uncertain whether any reported long-term increases in tropical cyclone frequency are robust, after accounting for past changes in observing capabilities.”¹
 - According to the U.S. Global Change Research Program, “[a]nalysis of 200 U.S. stream gauges indicates areas of both increasing and decreasing flooding magnitude but does not provide robust evidence that these trends are attributable to human influences.”²
- There is no connection between “man-made climate change” and drought in the U.S.
 - “... there has not yet been a formal identification of a human influence on past changes in United States meteorological drought through the analysis of precipitation trends.”³
- Since 2000, the area of the U.S. free from drought has actually increased.⁴
- The wildfires in California are a result of years of forest mismanagement, not climate change.
 - In 2018, the California independent state oversight agency the Little Hoover Commission found, “that California’s forests suffer from neglect and mismanagement, resulting in overcrowding that leaves them susceptible to disease, insects and wildfire.”⁵
- The costs of extreme weather events are not increasing due to the severity of the events. They are increasing because more people are building more expensive properties in susceptible areas.
 - “Long-term trends in economic disaster losses adjusted for wealth and population increases have not been attributed to climate change...”⁶
- Globally, disaster losses have actually decreased as a percentage of GDP.⁷

¹ IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)], https://www.ipcc.ch/site/assets/uploads/2018/05/SYR_AR5_FINAL_full_wcover.pdf.

² USGCRP, 2017: Climate Science Special Report: Fourth National Climate Assessment, Volume I [Wuebbles, D.J., D.W. Fahey, K.A. Hibbard, D.J. Dokken, B.C. Stewart, and T.K. Maycock (eds.)]. U.S. Global Change Research Program, https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf.

³ *Id.*

⁴ Roger Pielke, Jr., “A New US Areal No Drought Record,” May 16, 2019, <https://rogerpielkejr.com/2019/05/16/a-new-us-areal-no-drought-record/>.

⁵ Little Hoover Commission, *Fire on the Mountain: Rethinking Forest Management in the Sierra Nevada*, February 2019, <https://lhc.ca.gov/report/fire-mountain-rethinking-forest-management-sierra-nevada>.

⁶ IPCC, 2012: Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation, https://www.ipcc.ch/site/assets/uploads/2018/03/SREX_Full_Report-1.pdf.

⁷ Roger Pielke, Jr., “Tracking Progress on Disasters, 2018 Update,” January 10, 2019, <https://rogerpielkejr.com/2019/01/10/tracking-progress-on-disasters-2018-update/>.



COMBAT AMERICA'S CRITICAL MINERAL DEPENDENCY

Critical minerals are necessary for the modern economy, with applications in manufacturing, defense, renewable energy, advanced technology, and many other sectors. Congress must ensure that the U.S. is less dependent on foreign nations to meet its demand for these materials.

BACKGROUND

The Department of Interior finalized a list of 35 materials¹ that are considered critical for America's economic competitiveness, modernization of infrastructure, national security, and advanced technological development, including renewable energy technologies necessary for the expansion of solar, wind, energy storage, and electric vehicles. Despite the existence of substantial reserves of these resources in the United States, most critical minerals are not mined in the U.S. In fact, the U.S. has become increasingly dependent on foreign nations – China in particular – to meet demand for these essential commodities.

For example, in 2019, the United States had a 100 percent net import reliance on other nations for 17 minerals, including gallium, indium, and rare earth elements.² Among other uses, gallium, indium, and rareearth elements are components of smartphones, satellites, semiconductors, solar panels, and electric vehicles.³ China was the top import source for all three of these elements.⁴

Critical minerals are required for many modern defense systems, including aerospace applications.⁵ Another mineral with high relevance to our defense interests, uranium, was imported at a rate of 97 percent in 2018.⁶ The world's largest uranium producer is Kazakhstan, with Russia and Uzbekistan also as major producers.⁷ China is signaling an interest in the uranium market, as well, buying large mines in Namibia.⁸⁷

Given the serious need to maintain a stable supply of critical minerals, encouraging domestic production is in the nation's best interest. Moreover, since the United States has some of the best environmental and human labor standards in the world, it is preferable—as well as safer for the supply chain—to maximize domestic production of these resources.

One major obstacle to domestic mineral development is the long, confusing, and overly burdensome permitting process in the United States. Mining projects require years of environmental studies, permitting, bonding, and stakeholder engagement, both at the state and federal level. All told, a mining project in the United States may spend 7 to 10 years waiting for final permitting approval. In comparison, countries like Canada and Australia have illustrated a capacity to follow specific permitting timelines while maintaining environmental protections. Both countries' permitting timeframes average around two years, and both nations rank as the top two countries for mining investment.

POLICY SOLUTIONS

As demand grows for renewable energy technologies, electric vehicles, and high-tech devices, such as smart

phones, the need for critical minerals will continue to increase. The United States lacks resources in many stages of the minerals supply chain, with very little mining or processing of these materials occurring domestically. Congress should:

- Streamline the federal permitting process to boost access to critical minerals in a reliable and timely manner. The United States can promote domestic mineral independence by reducing delays and duplicative reviews while also maintaining robust environmental standards.
- Incentivize enough domestic refining capacity to meet demand. Much of what is mined in the U.S. must be shipped overseas to be refined and processed.⁹ Increasing the number of refineries in the U.S. would help prevent a chokehold at the processing stage of the supply chain.
- Prioritize mineral assessments at the federal level to identify valuable deposits across the country, allowing for more efficient and targeted development. Many potential domestic mineral reserves remain undiscovered. In fact, less than 18 percent of the U.S. has been adequately geologically mapped.¹⁰ The exploration phase of a mining project takes many years, potentially a decade or more.¹¹

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¹ Final List of Critical Minerals 2018, 83 FR 23295, May 18, 2018, <https://www.govinfo.gov/content/pkg/FR-2018-05-18/pdf/2018-10667.pdf>.

² U.S. Geological Survey (USGS), *Mineral Commodity Summaries 2020* (January 31, 2020), <https://pubs.usgs.gov/periodicals/mcs2020/mcs2020.pdf>.

³ *Mining the Future*, Foreign Policy Analytics Special Report (May 2019).

⁴ USGS, *supra*, note 1.

⁵ *Id.*

⁶ U.S. Energy Information Administration, *2018 Uranium Marketing Annual Report* (May 2019), <https://www.eia.gov/uranium/marketing/pdf/umar2018.pdf>.

⁷ U.S. Department of Commerce, *"A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals"* (June 4, 2019), <https://www.commerce.gov/news/reports/2019/06/federal-strategy-ensure-secure-and-reliable-supplies-critical-minerals>.

⁸ Thomas Duesterberg, *"Opponents of Trade Relief for Uranium Mining Have Unconvincing Case."* Forbes (March 25, 2019), <https://www.forbes.com/sites/thomasduesterberg/2019/03/25/opponents-of-section-232-relief-for-uranium-mining-relief-have-unconvincing-case/#274ce28b3f8d>.

⁹ Marc Humphries, *Critical Minerals and U.S. Public Policy*, Congressional Research Service (June 28, 2019).

¹⁰ U.S. Department of Commerce, *A Federal Strategy to Ensure Secure and Reliable Supplies of Critical Minerals* (June 4, 2019), https://www.commerce.gov/sites/default/files/2020-01/Critical_Minerals_Strategy_Final.pdf.

¹¹ Humphries, *supra*, note 9 and World Bank Group, *From Commodity Discovery to Production* (September 2016), <http://documents.worldbank.org/curated/en/573121473944783883/pdf/WPS7823.pdf>.



ANOTHER STEP TOWARD MEDICARE FOR ALL

Democrats want to use the budget reconciliation process to massively expand Medicare by covering care for vision, dental, and hearing.¹ This is seen as a top priority for Senator Bernie Sanders and no doubt the first step toward his ambition to have Medicare for All.²

- **Expanding the scope of Medicare would undermine Medicare Advantage.**
 - Medicare Advantage Plans (Part C), which are insurance plans offered by private companies approved by Medicare, often cover additional benefits, such as dental, vision, and hearing.³ These plans already give seniors options for additional coverage depending on varying needs.
 - In just ten years, the enrollment in Medicare Advantage has more than doubled and now covers 26 million people, accounting for 42% of individuals covered by Medicare.⁴ Of these beneficiaries, 89% have preventative dental services, 90% have hearing exams, and 98% have vision exams covered in their plans.⁵ Therefore, this Medicare expansion would undermine the options for coverage that seniors already use.
- **Socialized healthcare systems result in rationed care.**
 - In countries like the United Kingdom and Canada, care is defined by longer wait times, rationed care, fewer choices, and physician flight, among other poorer care compared to the U.S. (*See RPC's brief titled "High Costs of Socialized Medicine" for more information.*⁶)
 - The Fraser Institute found that average wait times between a referral from a general practitioner to receiving treatment in Canada continued to increase in 2020 to over 22 weeks.⁷ A 2014 report found these increased wait times may be associated with over 44,273 female deaths between 1993 and 2009.⁸
 - Although expanding Medicare may increase coverage on paper, often it does not translate to access to care. For example, many doctors and hospitals refuse to see Medicare or Medicaid patients because the programs pay out less to providers than other insurers, and that difference is growing.⁹ Government programs are also plagued with administrative problems, which are found to cost physicians to lose far more on billing problems with Medicaid and Medicare than with private insurers.¹⁰
- **Medicare is already bankrupt and relies on deficit spending.**
 - Although working individuals pay payroll taxes (FICA) that go toward Medicare, the program is not fully financed this way, unlike Social Security.
 - Medicare Part A, which covers Hospital Insurance, is primarily funded through payroll tax revenue. On the other hand, Medicare Parts B and D, which cover Medical Insurance and prescription drug coverage, are primarily funded through general tax revenue.¹¹
 - Medicare outlays totaled nearly \$1 trillion in 2020, of which only \$345 billion was covered by payroll tax receipts coming from the Hospital Insurance Trust Fund.¹² Further, according to the latest Trustees report, the Medicare Hospital Trust Fund will become insolvent in 2026.¹³
 - The Congressional Budget Office estimates expanding Medicare to cover vision, dental, and hearing would cost \$358 billion over 10 years, which will become even more expensive over time as enrollments rise and costs of care increase.¹⁴ This proposal could put the Medicare program as a whole on an even more unstable financial footing, harming the seniors it is intended to help.

POLICY SOLUTIONS

Expanding an already bankrupt Medicare program to cover additional benefits is simply an attempt by Democrats to enact Medicare for All in a piecemeal fashion. Congress should instead focus on solutions to bring down costs, increase access, and improve care for all Americans. For example, creating greater flexibility and expanding access to Health Savings Accounts (HSAs) could empower individuals to save for these future expenses.

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¹ Tami Luhby. Democrats want to expand Medicare benefits through spending bill. CNN. July 14, 2021. <https://www.cnn.com/2021/07/14/politics/medicare-dental-vision-benefits-spending-bill-democrats/index.html>

² Burgess Everett. Sanders pushes Medicare expansion in Dems' next big bill. Politico. March 26, 2021. <https://www.politico.com/news/2021/03/26/bernie-sanders-medicare-expansion-478166>

³ How do Medicare Advantage plans work? U.S. Centers for Medicare and Medicaid Services. <https://www.medicare.gov/sign-up-change-plans/types-of-medicare-health-plans/medicare-advantage-plans/how-do-medicare-advantage-plans-work>

⁴ Meredith Freed, Jeannie Fuglesten Biniek, Anthony Damico, and Tricia Neuman. Medicare Advantage in 2021: Enrollment Update and Key Trends. Kaiser Family Foundation. June 21, 2021. <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2021-enrollment-update-and-key-trends/>

⁵ Chris Pope. Filling the Wrong Gap. City Journal. June 29, 2021. <https://www.city-journal.org/dont-expand-medicare-to-cover-dental-benefits>

⁶ https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/Socialized%20Medicine_2.pdf

⁷ Bacchus Barua and Mackenzie Moir. Waiting Your Turn: Wait Times for Health Care in Canada, 2020 Report. Fraser Institute. December 10, 2020. <https://www.fraserinstitute.org/studies/waiting-your-turn-wait-times-for-health-care-in-canada-2020>

⁸ Bacchus Barua, Nadeem Esmail, and Taylor Jackson. Effect of Wait Times on Mortality in Canada. Fraser Institute. May 20, 2014. <https://www.fraserinstitute.org/studies/effect-of-wait-times-on-mortality-in-canada>

⁹ Eric Lopez, Tricia Neuman, Gretchen Jacobson, and Larry Levitt. How Much More Than Medicare Do Private Insurers Pay? A Review of the Literature. Kaiser Family Foundation. April 15, 2020. <https://www.kff.org/report-section/how-much-more-than-medicare-do-private-insurers-pay-a-review-of-the-literature-issue-brief/>

¹⁰ Abe Dunn, Joshua D. Gottlieb, Adam Shapiro, Daniel J. Sonnenstuhl, and Pietro Tebaldi. A Denial a Day Keeps the Doctor Away. National Bureau of Economic Research. July 1, 2021. <https://users.nber.org/~jdgottl/BillingCostsPaper.pdf>

¹¹ What is the Medicare Trust Fund and How is it Financed? Tax Policy Center. <https://www.taxpolicycenter.org/briefing-book/what-medicare-trust-fund-and-how-it-financed> and What's Medicare? U.S. Centers for Medicare and Medicaid Services. <https://www.medicare.gov/what-medicare-covers/your-medicare-coverage-choices/whats-medicare> and How is Medicare Funded? The Medicare Resource Center. October 3, 2019. <https://www.medicareresources.org/faqs/how-is-medicare-funded/>

¹² Medicare Baseline Projections. Congressional Budget Office. July 2021. <https://www.cbo.gov/system/files/2021-07/51302-2021-07-medicare.pdf>

¹³ 2020 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds. <https://www.cms.gov/files/document/2020-medicare-trustees-report.pdf>

¹⁴ Budgetary Effects of H.R. 3, the Elijah E. Cummings Lower Drug Costs Now Act. Congressional Budget Office. December 10, 2019. https://www.cbo.gov/system/files/2019-12/hr3_complete.pdf



HIGH COSTS OF SOCIALIZED MEDICINE

U.S. healthcare premiums continue to rise, draining household earnings.¹ Accordingly, Americans reportedly favor adopting an increasingly socialized health system, in pursuit of systemic reform.

As debate continues, it is essential to review patient outcomes across international models of socialized medical care. Decision-making between patients and physicians is generally based on individual circumstances or critical medical need. Socialized healthcare systems distance that relationship. Instead, socialized treatment plans are predetermined by bureaucrats, based on broad categorizations. Cost savings for individuals are achieved in exchange for rationed services, long wait times, and controversial ethical standards.

A World of Socialized Medicine

Comparing global healthcare models is difficult, as there is wide variety between the countries grouped under the same categories. The Manhattan Institute categorizes eight nations' healthcare systems into four broad models, listed below.²

- Single-payer (U.K. and Canada): the government is the predominant purchaser of medical services, with restrictions on private insurance.
- Dual-payer (Australia and France): the government is the primary purchaser of medical services, supplemented by private insurance whose premiums are publicly subsidized.
- Competing-payer (Germany, the Netherlands, Switzerland): the government subsidizes the purchase of private insurance.
- Segmented-payer (U.S.): a patchwork of employer-sponsored insurance, public entitlements, and individually purchased insurance.

U.S. Medicare for All (M4A) proposals represent a larger government takeover than any current international model. According to the Mercatus Center, doubling U.S. taxes would not be sufficient to pay for the high costs of implementing M4A.³ Further, the Netherlands and Nordic countries are gradually adopting more market-based approaches, such as private, employer-based insurance, to address access to care, rationing, and waiting lists.^{4,5}

As debate over healthcare reform continues across the U.S., Americans should review global patient care outcomes before enrolling in socialized medical treatment. The following chart lists select examples and outcomes across the U.K., Canada, and the Netherlands.

Patient Care		
Treatment of Women's Health	<ul style="list-style-type: none"> ➤ “Only 81% of [U.K.] breast cancer patients...live[d] at least five years after diagnosis” from 2005-2009, compared to 89% in the U.S.⁶ ➤ A 2014 report found that between 1993-2009, increased wait times in Canada may be associated with over 44,273 female deaths.⁷ 	<ul style="list-style-type: none"> ➤ The U.S. has the highest 5-year breast cancer survival rate out of 11 countries, as of 2019.⁸ The U.S. also performs the second-highest percentage of breast cancer screenings for female patients aged 50-69.⁹ ➤ The U.S. ranked as the second highest of six nations in a separate study where patients visited an OB/GYN at least once in the previous year, with the U.K. the second-lowest.¹⁰
The “Big C”: Rationed Cancer Care	<ul style="list-style-type: none"> ➤ 18% of U.K. patients requiring urgent cancer care do not receive treatment within 2 months of referral.¹¹ ➤ The U.K.’s National Health Service (NHS) withdrew funding for up to 25 cancer drugs in 2015, impacting an estimated 8,000 U.K. patients.¹² 	<ul style="list-style-type: none"> ➤ 83% of U.K. prostate cancer patients lived at least five years after diagnosis from 2005-2009, compared to 97% in the U.S.¹³ ➤ The NHS is facing thousands of lawsuits from cancer patients after canceling critical care due to backlog during the U.K.’s COVID-19 lockdown in 2020.¹⁴
Wait Times & Other Rationed Care Examples	<ul style="list-style-type: none"> ➤ 2016 data shows primary care doctors in the Netherlands only spend about 10 minutes with the typical patient, less than half the length of care that U.S. patients receive.¹⁵ Having more time per patient is linked to greater patient satisfaction with care.¹⁶ ➤ Canadians can expect long wait times for diagnostic technologies such as a CT scan (4.8 weeks), an MRI (9.3 weeks), or an ultrasound (3.4 weeks), as of 2019.¹⁷ ➤ Canadians experience most difficulty scheduling an appointment with a specialist out of 8 countries with varying healthcare models. ➤ Pay caps contribute to 50% of senior U.K. physicians considering reduced working hours; 60% of specialists intend to retire by age 60; 100,000 medical staffing vacancies strain the workforce of 1.2 million.¹⁸ 	<ul style="list-style-type: none"> ➤ The Foundation for Government Accountability reports 21,904 U.S. Medicaid recipients died due to long waiting lists since the Obamacare expansion. Over 650,000 Medicaid recipients are on waiting lists for home and community-based services.¹⁹ ➤ 104 of 195 local NHS commission panels ration cataract surgery across their respective U.K. regions, deeming it a “procedure of limited clinical value.”²⁰ This category is normally reserved for complementary or cosmetic treatment with “little evidence” for clinical health or cost-effectiveness.²¹ ➤ Local NHS panels similarly ration glucose monitors for diabetes patients, hernia surgery, and hip and knee replacement.²² ➤ The U.S. performs the second-highest rate of hip replacement procedures for seniors 65 and above out of 10 countries, with Canada and the U.K. the lowest.²³ ➤ A <i>British Medical Journal</i> investigation reported a 45% increase in hip or knee surgery denials by local NHS panels between 2017-2018.²⁴ These requests were submitted by general practitioners on behalf of their patients and denied by bureaucrats –some of whom have no medical background.

<p>Physician Flight, Technology Drain, & Other Issues</p>	<ul style="list-style-type: none"> ➤ 2016 data shows primary care doctors in the Netherlands only spend about 10 minutes with the typical patient, less than half the length of care that U.S. patients receive.^{xxv} Having more time per patient is linked to greater patient satisfaction with care.^{xxvi} ➤ Canadians experience most difficulty scheduling an appointment with a specialist out of 8 countries with varying healthcare models. ➤ Pay caps contribute to 50% of senior U.K. physicians considering reduced working hours; 60% of specialists intend to retire by age 60; 100,000 medical staffing vacancies strain the workforce of 1.2 million.^{xxvii} 	<ul style="list-style-type: none"> ➤ Overall, the Canadian medical system “provides the least hospital care, delivers consistently fewer outpatient procedures, and provides much less access to modern diagnostic technology” compared to 8 other countries.^{xxviii} ➤ The Netherlands’ system forces general practice doctors to work longer hours^{xxix,xxx} for less pay^{xxxi} than primary care physicians in the U.S. High administrative workload hurts the productivity of Dutch primary care doctors.^{xxxii} ➤ The U.S. has the third-highest rate of MRI scans and specialized scans of 9 countries.^{xxxiii} ➤ Medicare For All would cut payments to U.S. hospitals and physicians by an estimated 40%.^{xxxiv} ➤ The Netherlands legalized “default” adult organ donation in 2018 to address donor shortages. Under the law, all adults are presumed organ donors unless they specifically file paperwork opting out.^{xxxv}
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¹ Kaiser Family Foundation, <https://www.kff.org/health-costs/report/2020-employer-health-benefits-survey/>

² <https://media4.manhattan-institute.org/sites/default/files/Medicare-for-all-lessons-from-abroad.pdf>

³ <https://www.wsj.com/articles/even-doubling-taxes-wouldnt-pay-for-medicare-for-all-1533163559>

⁴ <https://www.manhattan-institute.org/using-lessons-from-international-health-care-medicare-for-all>

⁵ <https://www.heritage.org/health-care-reform/commentary/socialist-nordic-countries-are-actually-moving-toward-private-health>

⁶ <https://www.cdc.gov/cancer/dcpc/research/articles/concord-2.htm> and <https://www.forbes.com/sites/sallypipes/2019/04/01/britains-version-of-medicare-for-all-is-collapsing/#5d387a0336b8>

⁷ Bacchus Barua, Nadeem Esmail, Taylor Jackson, *Effect of Wait Times on Mortality in Canada*, 2014 Report, Fraser Institute <https://www.fraserinstitute.org/studies/effect-of-wait-times-on-mortality-in-canada>

⁸ The Commonwealth Fund, based on statistics provided by OECD data. <https://www.commonwealthfund.org/chart/2020/us-has-highest-average-five-year-survival-rate-breast-cancer-lowest-cervical-cancer>. According to the CDC, female breast cancer mortality rates accounted for 19.9% of U.S. cancer deaths in 2017. 250,000 cases of breast cancer are diagnosed in women and about 2,300 in men. About 42,000 women and 510 men in the U.S. die each year from breast cancer. <https://gis.cdc.gov/Cancer/USCS/DataViz.html>.

⁹ <https://www.commonwealthfund.org/chart/2020/us-excel-prevention-measures-including-flu-vaccinations-and-breast-cancer-screenings>

¹⁰ <https://media4.manhattan-institute.org/sites/default/files/Medicare-for-all-lessons-from-abroad.pdf>

¹¹ <https://media4.manhattan-institute.org/sites/default/files/Medicare-for-all-lessons-from-abroad.pdf>

¹² <https://www.telegraph.co.uk/news/politics/11340860/25-cancer-drugs-to-be-denied-on-NHS.html>

¹³ <https://www.cdc.gov/cancer/dcpc/research/articles/concord-2.htm> and <https://www.forbes.com/sites/sallypipes/2019/04/01/britains-version-of-medicare-for-all-is-collapsing/#5d387a0336b8>. <https://www.forbes.com/sites/sallypipes/2019/04/01/britains-version-of-medicare-for-all-is-collapsing/#5d387a0336b8>

¹⁴ <https://www.dailymail.co.uk/news/article-8824905/NHS-faces-lawsuits-cancer-patients-scans-tests-operations-cancelled-lockdown.html>

¹⁵ <https://bmjopen.bmj.com/content/7/10/e017902>

¹⁶ <https://link.springer.com/article/10.1186/1472-6963-9-118>

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- ¹⁷ Bacchus Barua, Mackenzie Moir, *Waiting Your Turn: Wait Times for Health Care in Canada*, 2019 Report, Fraser Institute <https://www.fraserinstitute.org/studies/waiting-your-turn-wait-times-for-health-care-in-canada-2019>.
- ¹⁸ <https://www.manhattan-institute.org/using-lessons-from-international-health-care-medicare-for-all>
- ¹⁹ <https://thefga.org/wp-content/uploads/2018/03/WAITING-FOR-HELP-The-Medicaid-Waiting-List-Crisis-07302018.pdf>
- ²⁰ <https://mtg.org.uk/wp-content/uploads/2019/03/Ration-Watch-launch-core-FINAL-200319-.pdf> and <https://www.opticianonline.net/news/ccgs-restrict-cataract-surgery-in-nhs-england-1> and <https://www.forbes.com/sites/sallypipes/2019/04/01/britains-version-of-medicare-for-all-is-collapsing/#5d387a0336b8>
- ²¹ <https://mtg.org.uk/wp-content/uploads/2019/03/Ration-Watch-launch-core-FINAL-200319-.pdf>
- ²² <https://mtg.org.uk/wp-content/uploads/2019/03/Ration-Watch-launch-core-FINAL-200319-.pdf> and <https://www.forbes.com/sites/sallypipes/2019/04/01/britains-version-of-medicare-for-all-is-collapsing/#5d387a0336b8>
- ²³ <https://www.commonwealthfund.org/publications/issue-briefs/2020/jan/us-health-care-global-perspective-2019>
- ²⁴ <https://www.bmj.com/content/362/bmj.k3002/rapid-responses> and <https://www.independent.co.uk/news/health/nhs-rations-operations-hip-patients-beg-treatment-cuts-funding-a8453531.html>
- ^{xxv} <https://bmjopen.bmj.com/content/7/10/e017902>
- ^{xxvi} <https://link.springer.com/article/10.1186/1472-6963-9-118>
- ^{xxvii} <https://www.manhattan-institute.org/using-lessons-from-international-health-care-medicare-for-all>
- ^{xxviii} <https://media4.manhattan-institute.org/sites/default/files/Medicare-for-all-lessons-from-abroad.pdf>
- ^{xxix} <https://bradscholars.brad.ac.uk/handle/10454/17377>
- ^{xxx} <https://www.aafp.org/fpm/2017/0100/p26.html>
- ^{xxxi} <https://www.vox.com/policy-and-politics/2020/1/17/21046874/netherlands-universal-health-insurance-private>
- ^{xxxii} <https://www.vox.com/policy-and-politics/2020/1/17/21046874/netherlands-universal-health-insurance-private>
- ^{xxxiii} <https://www.commonwealthfund.org/publications/issue-briefs/2020/jan/us-health-care-global-perspective-2019>
- ^{xxxiv} <https://www.nytimes.com/2019/04/21/health/medicare-for-all-hospitals.html>
- ^{xxxv} <https://www.cnn.com/2018/02/14/health/new-dutch-law-organ-donors-bn-intl/index.html>



REDUCE PREMIUMS BY CODIFYING ASSOCIATION HEALTH PLANS

As U.S. healthcare spending continues to outpace inflation over time, Congress should codify association health plans (AHPs) as an effective mechanism to provide quality health insurance at a lower cost to consumers.

BACKGROUND

AHPs have been around for decades¹ and generally refer to “a wide spectrum of arrangements that provide health coverage through different types of organizations, including but not limited to trade associations, professional societies, and chambers of commerce.”² Presently, there is no singular definition of AHPs used by all federal regulatory agencies.³ AHPs permit individuals or employers to shop for coverage as a larger group in an effort to obtain more favorable coverage and pricing from insurers.

The Department of Labor (DOL) regulates AHPs as multiple employer welfare agreements (MEWA) that amount to two or more employers providing benefits to their employees. The majority of AHPs have historically provided individual or small group coverage.⁴ In most cases, DOL has concluded that the association is not an employer for regulatory purposes.⁵

On June 18, 2018,⁶ DOL finalized a rule increasing access to AHPs by expanding the ability of small businesses and self-employed workers to associate by geography or industry and be treated as a single large employer.⁷ Under the rule, “AHPs may not charge higher premiums or deny coverage as a result of pre-existing conditions, or cancel coverage because an employee becomes ill.”⁸ AHPs, “like any other group health plan, cannot discriminate in eligibility, benefits, or premiums against an individual within a group of similarly situated individuals based on a health factor.”⁹

Following the rule, the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) estimated that nearly 5 million people would enroll in AHPs in 2022.¹⁰ Additionally, the CBO report estimated that roughly 400,000 people, who would otherwise be uninsured, would receive AHP coverage over the 2019 to 2028 period.¹¹ Most importantly, “CBO and JCT estimate[d] that premiums for AHPs sold under the new rules will be, on average, roughly 30 percent lower than premiums for fully regulated small- group coverage.”¹²

In March 2019, a federal judge in the District of Columbia struck down the final rule after determining that the DOL’s interpretation of “employer” was unreasonable and exceeded the statutory authority delegated by Congress through the Employee Retirement Income Security Act (ERISA).¹³ Following the Department of Justice’s appeal in April 2019, the DOL announced that it would not pursue enforcement actions against employers who relied in good faith on the AHP rule’s validity.¹⁴

POLICY SOLUTIONS

Congress should amend ERISA to provide smaller employers and self-employed individuals access to large-group coverage by permitting AHPs to function as “employers.”¹⁵ Legislation should include nondiscrimination provisions which prohibit an AHP from basing membership, eligibility for health benefits, and premiums on health factors.

Congress should also exempt AHPs from certain state insurance requirements when association members reside in different states. Enacting H.R. 4547, the Association Health Plans Act of 2021, would accomplish many of these objectives.

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¹ U.S. Gov't Accountability Off., HEHS-96-59R, *Employer Association Health Plans* (1995), <https://www.gao.gov/assets/90/85191.pdf>.

² Bernadette Fernandez, Cong. Research Serv., R45216, *Background Information on Health Coverage Options Addressed in Executive Order 13813* (Jun. 2018), <https://fas.org/sgp/crs/misc/R45216.pdf>.

³ *Id.*

⁴ See Centers for Medicare & Medicaid Services, *Application of Individual and Group Market Requirements Under Title XXVII of the Public Health Service Act when Insurance Coverage Is Sold to, or Through, Associations* 3 (September 2011), https://www.cms.gov/CCIIO/Resources/Files/Downloads/association_coverage_9_1_2011.pdf.

⁵ Fernandez, *supra*, note 2.

⁶ 29 C.F.R. § 2510.3-5 (2018).

⁷ U.S. Dep't of Labor, *About Association Health Plans*, <https://www.dol.gov/general/topic/association-health-plans>, (last visited Jun. 17, 2019).

⁸ *Id.*

⁹ 29 C.F.R. § 2510.3-5 (2018).

¹⁰ Congressional Budget Office, *How CBO and JCT Analyzed Coverage Effects of New Rules for Association Health Plans and Short-Term Plans* (January 2019), https://www.cbo.gov/system/files/2019-01/54915-New_Rules_for_AHPs_STPs.pdf

¹¹ *Id.*

¹² *Id.* at 5.

¹³ *California v. U.S. Dep't of Labor*, 2018 D.C. Cir. 18-1747.

¹⁴ *Id.*

¹⁵ Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, (1974).



HEALTHCARE FREEDOM THROUGH HEALTH SAVINGS ACCOUNTS

Americans are spending more on healthcare than anytime in American history. Despite Obamacare's promise to lower healthcare costs, from 2010 to 2018, household health insurance expenditures almost doubled.¹ Health Savings Accounts (HSAs) present a path for Americans to expand healthcare options while reducing costs and saving for retirement. HSAs give people power over their healthcare dollars and decisions, thereby incentivizing healthcare providers to compete on cost and quality. Congress can enact policies that allow more Americans to take advantage of their numerous benefits.²

BACKGROUND

- An HSA is a tax-advantaged savings account that can be used for medical expenses.
- HSAs are available to patients enrolled in high-deductible health insurance plans.³ The annual deductible must be at least \$1,400 for individual coverage and at least \$2,800 for family.⁴
- HSAs offer numerous benefits to patients:
 - They are tax-advantaged accounts: they are funded with pre-tax income, growth earnings are tax-deferred, and withdrawals are not taxed if they are used for qualifying medical expenses.⁵ Qualified expenses include deductibles, copayments, and coinsurance, among other expenses.⁶
 - Any contributions made to HSAs rollover each year, remaining in the account until they are used.⁷
 - They are portable accounts that may be kept even when changing employers. HSAs may also be transferred to a spouse after the owner's death.⁸
- HSAs serve as both savings and investment account for vital healthcare expenses. Because these tax-advantaged funds rollover each year, they can be saved to cover gaps in medical costs during retirement.⁹
- As of December 2020, there were 11.4 million HSA accounts with assets totaling \$32.9 billion, an increase from \$28.1 billion in December 2019.¹⁰ In 2019, individual account balances averaged \$3,221.¹¹ The Employee Benefit Research Institute's analysis found that HSA holders who hold their account longer are likely to use it as an investment and be prepared against unexpected medical bills.¹²
- Because patients are allowed to keep their unused HSA funds, they have a strong financial incentive to utilize medical services when they are truly needed and to make healthy lifestyle choices that reduce overall medical visits and improve outcomes, which will reduce healthcare costs.
- Some improvements have been made to HSAs: In 2019, former President Trump signed an executive order that expanded opportunity for patients with chronic health problems to utilize HSAs. The order allows insurers to provide pre-deductible coverage for chronic health treatments and maintain eligibility for HSAs.¹³

POLICY SOLUTIONS

More steps can be taken to improve usability and availability of HSAs.

- HSAs have an annual contribution limit of \$3,550 for individuals and \$7,100 for families.¹⁴ Congress may consider increasing the contribution limit. Individual and families should be given the opportunity to save an amount that works best for their personal health needs.

- Congress may consider detaching HSAs from high-deductible health insurance plans so more Americans utilize their benefits.
- Congress may also consider expanding qualified uses for HSA funds including: premium payments for additional health insurance after retirement, gym and health club memberships, direct primary care, over-the-counter medication, payments for nursing homes and long-term care, and other health related expenses.
- Members of Congress may consider supporting bills that have been introduced with these reforms. For example, H.R. 2808, Health Freedom and Flexibility Act, would repeal certain limitations on contributions, among other provisions. Also, H.R. 8032, Health Savings Account for All Act of 2020, would eliminate the requirement for HSA owners to be enrolled in a high deductible health plan, as well as repeal contribution limit and allow HSA fund to be used for insurance premiums.

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¹ <https://www.bls.gov/ncs/ebs/factsheet/high-deductible-health-plans-and-health-savings-accounts.htm>

² <https://www.washingtontimes.com/news/2021/dec/20/rep-gary-palmer-gop-policy-chief-wants-party-have/>

³ <https://marketplace.cms.gov/outreach-and-education/health-savings-account.pdf>

⁴ <https://www.crs.gov/Reports/R45277?source=search&guid=29533bd0f0ca4d6d9d7770106503ccd5&index=1>

⁵ <https://www.crs.gov/Reports/R45277?source=search&guid=29533bd0f0ca4d6d9d7770106503ccd5&index=1>

⁶ <https://marketplace.cms.gov/outreach-and-education/health-savings-account.pdf>

⁷ <https://www.irs.gov/publications/p969>

⁸ <https://www.irs.gov/publications/p969>

⁹ <https://www.forbes.com/sites/bobcarlson/2021/09/27/the-power-of-health-savings-accounts-for-retirement-planning/?sh=3ec6ef46174b> ¹⁰

<https://www.ebri.org/health/hsa-database> and <https://www.ebri.org/content/trends-in-health-savings-account-balances-contributions-distributions-and-investments-2011-2019-estimates-from-the-ebri-hsa-database>

¹¹ <https://www.ebri.org/content/trends-in-health-savings-account-balances-contributions-distributions-and-investments-2011-2019-estimates-from-the-ebri-hsa-database>

¹² <https://www.ebri.org/publications/research-publications/issue-briefs/content/trends-in-health-savings-account-balances-contributions-distributions-and-investments-and-the-impact-of-covid-19>

¹³ <https://www.federalregister.gov/documents/2019/06/27/2019-13945/improving-price-and-quality-transparency-in-american-healthcare-to-put-patients-first>

¹⁴ <https://www.irs.gov/publications/p969>



EXPAND HEALTH REIMBURSEMENT ARRANGEMENTS

Employer-sponsored health insurance covers more than half of the American population.¹ For those employees, health insurance is often limited to a few options selected by a corporate administrator. Congress should codify the rule implemented under the Trump administration that expands access to employer-sponsored Health Reimbursement Arrangements (HRA).

BACKGROUND

The Affordable Care Act (ACA) requires certain large employers – those with 50 or more full-time employees – to offer employees “minimum essential coverage under an eligible employer-sponsored plan” or risk paying a penalty to the IRS.² The “employer mandate” entrenches employer-sponsored group insurance and places health insurance decisions in the hands of corporate human resources personnel, rather than employees.

According to 2020 data from the Census Bureau, 54.4 percent of the population, or 177 million Americans, received health insurance through employers.³ While some employers may want to offer group health insurance as a means of retaining employees, others may see a competitive advantage and potential cost savings in giving employees control over their health care decisions.

Many employers have little negotiating power over group insurance products. As employees age, have children, or contract significant illnesses, those health care costs are distributed to the rest of the employee group in the form of higher premiums.

Employees often bear a significant portion of any premium increase. According to the Kaiser Family Foundation, “Premium contributions by covered workers average 18% for single coverage and 30% for family coverage.”⁴ If higher premiums or paying an increased premium share creates financial hardship for employees, they are powerless to negotiate directly with the group insurer or take their health insurance business to another provider.

Under the 21st Century Cures Act of 2016,⁵ employers with under 50 full-time employees who do not sponsor a group health plan may fund employee health reimbursement arrangements (HRAs) to pay for nongroup plan health insurance premiums. These new HRAs, known as qualified small employer health reimbursement arrangements (QSEHRA), cap maximum reimbursement and must generally be offered on the same terms for all employees.

In 2019, the Trump administration finalized a rule that provides more flexibility to HRAs for all employers by creating two classes of HRAs, each funded with pre-tax dollars.⁶ The first HRA class allows employees to purchase ACA-compliant individual-market insurance coverage. The other permits employers to give employees up to \$1800 tax-free dollars in order to purchase “excepted” policies such as dental or vision care and short-term insurance. On January 28, 2021, President Biden signed an executive order revoking the Trump administration’s rule on HRAs.⁷

POLICY SOLUTIONS

Congress should enact legislation consolidating the types of HRAs permitted by current law and the former Trump administration regulation. HRA access should include all employers (rather than just the small businesses covered under the 21st Century Cures Act), satisfy the ACA's employer mandate, and be fully deductible to the employer and excludable from employee income.

Congress could also pass H.R. 4123, the Increasing Health Coverage through HRAs Act of 2021, codifying the Trump administration's final rule which would permit employers who offer group coverage to also contribute to an HRA to reimburse employees for medical expenses, dental and vision premiums, and premiums for short-term health insurance.

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¹ Katherin Keilser-Starkey and Lisa Bunch. Health Insurance Coverage in the United States: 2020, United States Census Bureau, U.S. Department of Commerce, issued Sept 2021. <https://www.census.gov/content/dam/Census/library/publications/2021/demo/p60-274.pdf>

² 26 U.S.C. § 4980H (2013).

³ Keilser-Starkey, *supra* note 1.

⁴ 2019 Employer Health Benefits Survey, Henry J. Kaiser Family Foundation (Sept. 25, 2019), <https://www.kff.org/report-section/ehbs-2019-section-1-cost-of-health-insurance/>

⁵ 21st Century Cures Act of 2016, Pub. L. No. 114-255, (Dec. 13, 2016).

⁶ 84 FR 28888 (2019).

⁷ "Strengthening Medicaid and the Affordable Care Act." January 28, 2021. <https://www.federalregister.gov/documents/2021/02/02/2021-02252/strengthening-medicare-and-the-affordable-care-act>



EXPANSION OF SHORT-TERM HEALTH PLANS

The Affordable Care Act (ACA), or Obamacare, imposed high costs on health insurance markets and premium prices. To address these adverse impacts, the Trump Administration finalized a rule in October 2018 that expanded access to short-term, limited duration insurance (STLDI).¹ On January 28, 2021, President Biden signed an executive order directing agencies to reexamine certain policies affecting health care,² but have yet to issue a rule reversing the Trump STLDI policy.

- **Obamacare Premiums are Expensive and Non-Competitive.**

- Obamacare individual health plans are expensive. In 2017, the average premium in the 39 states using the federal Exchange more than doubled the premium recorded in 2013.³
- This is exacerbated by a lack of competition in healthcare markets. In 2018, 26 percent of enrollees living in 52 percent of counties had access to only one insurer on the Exchange.⁴
- As premiums rose, major private insurers began to offer STLDI plans. Enrollment in these plans increased by 121% from 2012 to 2016, even as enrollees were subject to the former Obamacare individual mandate penalty.⁵

- **STLDI Policies Are Affordable, Flexible, and Competitive.**

- These policies create competition by providing a short-term alternative to Obamacare and are an estimated 50 to 80 percent cheaper than Obamacare plans.⁶
- Enrollment may only require responses to “yes/no” questions and can take effect as early as the next day.⁷
- STLDI plans are excluded from the definition of “individual health insurance coverage,” and not required to provide all 10 categories of benefits mandated for such plans.⁸ Instead, individuals can choose plans with coverage that aligns with their needs.
- They are also exempt from Obamacare’s “community-rating” regulations which impose uniform premium levels across broad demographic groups, regardless of healthcare costs.⁹
- STLDI plans may not be the best option for every individual.¹⁰ However, expanding STLDI plans provides an option that returns power to people, and not Washington.

- **The STLDI Rule Expanded Short-Term Insurance Policies.**

- Previously, STLDI policies had a maximum length of under three months.¹¹ The Trump Administration amended the definition of short-term, limited duration insurance to mean health coverage, with a:
 - Specified end date of less than 12 months after the contract’s effective date; and
 - Duration of up to 3 years total, with renewals or extensions.¹²
- The rule did not change or eliminate existing rules governing plans under Obamacare.

¹ Short-Term, Limited-Duration Insurance Rule, 83 FR 38212 (August 3, 2018),

<https://www.federalregister.gov/documents/2018/08/03/2018-16568/short-term-limited-duration-insurance>.

² <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/28/fact-sheet-president-biden-to-sign-executive-orders-strengthening-americans-access-to-quality-affordable-health-care/>

³ ACA plans further drove up premiums by forcing some individuals to pay for coverage and services they did not need or could not afford. <https://www.federalregister.gov/documents/2017/10/17/2017-22677/promoting-healthcare-choice-and-competition-across-the-united-states>

⁴ *Kaiser Family Foundation*, “*Insurer Participation on ACA Marketplaces, 2014-2018*,” <https://www.kff.org/private-insurance/issue-brief/insurer-participation-on-aca-marketplaces-2014-2020/> (November 10, 2017).

⁵ Manhattan Institute, *Renewable Term Health Insurance: Better Coverage than Obamacare*, (May 16, 2019), <https://www.manhattan-institute.org/cheaper-health-insurance-alternatives-to-obamacare-for-low-medium-risk-patients>.

⁶ <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-administration-working-provide-flexible-affordable-healthcare-options-americans/> (August 1, 2018).

⁷ Short-term health insurance by state, <https://www.healthinsurance.org/short-term-health-insurance/#gone> (Last accessed September 23, 2020).

⁸ Short-Term, Limited-Duration Insurance Rule, 83 FR 38212 (August 3, 2018),

<https://www.federalregister.gov/documents/2018/08/03/2018-16568/short-term-limited-duration-insurance>.

⁹ *Id.*

¹⁰ For example, individuals with pre-existing conditions or those who need more comprehensive coverage.

¹¹ Cato Institute, “Comments on Short-Term, Limited Duration Insurance – CMS-9924-P,” (April 23, 2018), <https://www.cato.org/sites/cato.org/files/pubs/pdf/cannon-short-term-insurance-comment-update.pdf>.

¹² Short-Term, Limited-Duration Insurance Rule, 83 FR 38212 (August 3, 2018),

<https://www.federalregister.gov/documents/2018/08/03/2018-16568/short-term-limited-duration-insurance>.



REINSURE THE PREEXISTING CONDITION UNFUNDED MANDATE

A small portion of the population accounts for a disproportionately high percentage of health care spending. When included in group insurance coverage, these individuals drive up costs for all enrollees. The Federal Government should support reinsurance for the costliest utilizers of health care to reduce premiums for the remaining population.

BACKGROUND

The Affordable Care Act (ACA) requires private health insurers to provide coverage to individuals regardless of health status, medical history, and preexisting conditions.¹ Under the ACA, insurers can adjust premiums based solely on certain ACA-specified factors (i.e., individual or family enrollment, geographic rating area, tobacco use, and age).

Democrats and Republicans have supported such policies despite polarizing disagreements over the ACA. Regardless of the future status of the ACA law, the federal government will likely continue to mandate coverage for preexisting conditions in a manner that fails to account for their comparably high health care spending.

According to the Peterson-Kaiser Health System Tracker, “5% of the population accounted for half of all health spending [in 2019].”² The dollar figures attached to the highest health care spenders are significant. “The 5% of people with the highest health spending had an average of \$61,000 in health expenditures annually; people with health spending in the top 1% have average spending of over \$130,000 per year.”³

Under the terms of the ACA, the federal government imposes a mandate on private companies to provide benefits to a population which might otherwise be denied coverage or exhaust lifetime policy limits. Because health insurers may not charge increased premiums for various health conditions under the law,⁴ those additional costs are spread across their respective enrollees in the form of higher premiums. In short, the preexisting condition coverage requirement and ban on lifetime policy limits are essentially unfunded government mandates.

POLICY SOLUTIONS

One option to end the ACA’s unfunded coverage mandates is to simply repeal the mandates outright. Alternatively, Congress should reinsure against risk of loss from the costliest enrollees to reduce insurance premiums for most Americans. If the federal government insists on mandating coverage, it should share a corresponding portion of increased premium costs due to preexisting conditions.

The Fair Care Act of 2019 contained a program known as the Invisible High Risk Pool Reinsurance (IHRPR) Program.⁵ An actuarial study of the IHRPR program found that a reinsurance program covering risk beyond \$10,000 of benefits per year would reduce “average premiums in the new risk pool in the individual marketplace” between 12 to 31 percent.⁶

The Foundation for Research on Equal Opportunity suggests the funds could be administered through: federal reinsurance program, block grants to states, or a combination of each “under which states could have the option to take the funds in a block grant form, or leave the reinsurance program to the federal government.”⁷ Congress should consider basing the reinsurance premium amount and risk retention for insurers on the relative year-over-year health care spending by the covered high-risk individual. Doing so would ensure that health insurers retain an incentive to create downward pressure on health care spending.

To ensure the reinsurance program doesn’t exceed Medicare payment rates, Congress must ensure that the negotiated reinsurance policy payment rate for items and services is equivalent to the Medicare reimbursement rate under Title XVIII of the Social Security Act. If the underlying health care policy covers items and services not covered by the Medicare program, the Secretary of the Department of Health and Human Services should determine a payment schedule.

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¹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

² Jared Ortaliza, Matthew McGough, et al. “How Do Health Expenditures Vary Across the Population?” Kaiser Family Foundation. November 12, 2021 <https://www.healthsystemtracker.org/chart-collection/health-expenditures-vary-across-population/>

³ Id.

⁴ 45 C.F.R. § 144, 146, and 147 (2010).

⁵ H.R. 1332, 116th Cong. (2019).

⁶ The Federal Invisible High Risk Pool, Milliman, Inc. (2017), <https://thefga.org/wp-content/uploads/2017/04/The-Federal-Invisible-High-Risk-Pool.pdf>.

⁷ Avik Roy, Bringing Private Health Insurance Into the 21st Century, <https://freopp.org/bringing-private-health-insurance-into-the-21st-century-d1df138f1f0c> (last accessed February 10, 2019).



REFORM FEDERAL PRESCRIPTION DRUG SPENDING

As a major direct and indirect purchaser of prescription drugs, Congress must analyze the current federal drug purchasing system, ensure that the drug marketplace is competitive, and protect taxpayers.

BACKGROUND

As of 2019, 90 percent of prescriptions filled in the United States are low-cost generics which account for roughly 20 percent of total drug spending.¹ Most increases in prescription drug spending are driven by brand-name drugs, biologics, and specialty drugs.²

The Federal Government purchases prescription drugs through a wide range of programs. In 2018, the Federal Government spent about \$152 billion on prescription drugs through Medicare, Medicaid, Children's Health Insurance Program (CHIP), the Department of Defense and the Department of Veterans Affairs (VA) alone. That amount represents over 45 percent of the \$335 billion in total national expenditures on prescription drugs.³

From 2008 to 2018, federal prescription drug spending across the aforementioned federal programs increased 94 percent, but spending growth wasn't spread equally across the programs.⁴ For example, Medicare drug spending increased 111 percent from 2008 to 2018, and the federal portion of Medicaid drug expenditures increased nearly 74 percent.⁵ Over the same period, other federal prescription drug spending increased by only 31 percent.⁶

Many variables contribute to the discrepancy in prescription drug spending across different federal programs, but, ultimately, the Federal Government pays different prices for many of the same prescription drugs depending on the federal program:

- **Medicare Part D** is a voluntary drug benefit offered through private health care plans that contract with the Department of Health and Human Services (HHS). The Part D program relies on market competition to limit spending. Plan sponsors, which compete for enrollees, negotiate rebates, discounts, and other price concessions with manufacturers. The Affordable Care Act (ACA) amended Part D to require additional price discounts from manufacturers.
- **Medicare Part B** covers, among other services, injectable or intravenous drugs administered as part of a service in a doctor's office or hospital outpatient department. Part B also covers specific drugs, such as immunosuppressant products, vaccines, transplant drugs, and oral end stage renal disease medications. Under Part B, physicians who purchase prescription drugs for administration are reimbursed by Medicare for the average sales price of a drug, plus an additional 6 percent.
- **Medicaid** prescription drug coverage is an optional benefit covered by all states. Manufacturers that choose to sell their drugs to state Medicaid agencies must enter into a national rebate agreement with the HHS Secretary and provide information on their lowest or "best" drug prices.⁷ Manufacturer rebates vary depending on the specific product. States may limit formularies and require use of generic drugs when possible. Drug manufacturers that participate in Medicaid must sell their products at a discounted price to health providers covered by the 340B program.

- **The Veterans Health Administration (VHA)** reduces variability in access to pharmaceuticals by using a national formulary process. The VA uses multiple contracting mechanisms to acquire pharmaceutical supplies including the federal supply schedule (FSS), performance-based incentive agreements, or blanket purchase agreements (BPAs), temporary price reductions, pricing under the Veterans Health Care Act of 1992,⁸ and national standardization contracts. On a drug-by-drug basis, the VHA selects the mechanism that offers the best value at the lowest price.⁹

Medicare prescription drug purchasing is notably distinct in that the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), which created Medicare Part D, contains a “noninterference provision.”¹⁰ This provision prohibits the HHS Secretary from intervening in negotiations between Part D plan sponsors, drug manufacturers, and pharmacies or from requiring a specific Part D formulary.¹¹ Federal law also requires Medicare Part D plans to purchase six categories of drugs regardless of price or value.¹²

POLICY SOLUTIONS

All prescriptions are not created equally. Some have been around for decades, are effective treatments, and are quite affordable in generic form. Others represent cutting-edge biotechnology, treat relatively small populations, and are exceptionally expensive branded drugs and biologics. Congress may consider the following options to address drug prices:

- Require cost transparency for prescription drugs and biologics purchased by the Federal Government. Because of various rebates and discounts, determining the actual cost of a given unit of a specific therapy often proves difficult. The Federal Government should standardize this formula for federal purchases and provide a price-per-unit cost under each federal program that purchases prescription drugs.
- Allow reimportation of drugs that meet FDA standards. Significant price differences for the same drugs and biologics sold inside and outside of the United States are well documented. Allowing the safe reimportation of drugs purchased from foreign countries should result in cost savings for consumers. In 2019 and 2020, six states enacted laws to promote the importation of prescription drugs.¹³
- Address practices that unnecessarily delay generic alternatives coming to market. Whether it’s limiting frivolous petitions against generic drug approvals, ensuring generic manufacturers’ access to drug samples, or curbing reverse-payment settlements which delay generics coming to market, Congress has many options to make lower-cost generic drugs and biologics available as soon as patents expire.¹⁴

Publ. 2020 (Updated November 24, 2021)

¹ Association for Affordable Medicine, *The Case for Competition: 2020 Generic Drug & Biosimilars Access & Savings in the U.S.* Report, <https://accessiblemeds.org/resources/reports/2020-generic-drug-biosimilars-access-and-savings-us-report>

² Suzanne M. Kirchhoff, Judith A. Johnson, and Susan Thaul, Cong. Research Serv., R44832, *Frequently Asked Questions About Prescription Drug Pricing and Policy* 9 (2018), <https://fas.org/sgp/crs/misc/R44832.pdf>.

³ CMS, “National Health Expenditure Projections 2019-2028,” at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/Downloads/Proj2019Tables.zip>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* Notably, out-of-pocket prescription drug spending decreased nearly 6% from 2008-2018 while private health insurance spending increased 25%.

⁷ Rachel Dolan and Marina Tran, *Pricing and Payment for Medicaid Prescription Drugs*, Kaiser Family Foundation, Jan. 23, 2020, <https://www.kff.org/medicaid/issue-brief/pricing-and-payment-for-medicaid-prescription-drugs/>.

⁸ Pub. L. No. 102-585

⁹ See, Kirchhoff, *supra*, note 2.

¹⁰ Pub. L. No. 108-173

¹¹ §1860D-11(i) of the Social Security Act states, “In order to promote competition under this part and in carrying out this part, the Secretary (1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and (2) may not require a particular formulary or institute a price structure for the reimbursement of covered Part D drugs.”

¹² The categories are antidepressants, antipsychotics, anticonvulsants, immunosuppressants for treatment of transplant rejection, antiretroviral drugs (such as those used to treat HIV), and anti-cancer drugs.

¹³ Meredith Freed, Tricia Neuman, and Juliette Cubanski. *10 FAQs on Prescription Drug Importation.*, Kaiser Health News, July 28, 2021, <https://www.kff.org/medicare/issue-brief/10-faqs-on-prescription-drug-importation/>

¹⁴ *See generally*, Aaron S. Kesselheim, *Strategies That Delay Market Entry of Generic Drugs*, The Commonwealth Fund, Sept. 18, 2017, <https://www.commonwealthfund.org/publications/journal-article/2017/sep/strategies-delay-market-entry-generic-drugs>.



CRITICAL RACE THEORY: WHAT YOU NEED TO KNOW

According to Critical Race Theory (CRT) advocates, Martin Luther King Jr.'s dream that his children would "one day live in a nation where they will not be judged by the color of their skin but by the content of their character" is a "dangerous" idea that needs to be opposed.¹ Proponents of CRT are working to insert a racist and dangerous, anti-American worldview into every American institution.

Critical Theory, the intellectual foundation of CRT, is a theory developed from the writings of Karl Marx who taught that the central feature of society is a power struggle, a conflict between the oppressed and the oppressor.² It is a deliberate rejection of all western norms and traditions.³

CRT expands critical theory by framing the power struggle as one between races, with minorities as the oppressed and white people as the oppressors.⁴ Unlike MLK, CRT advocates believe that everyone should be judged by the color of their skin, not "the content of their character."

WHAT CRT IS:

- CRT proponents claim that America is systemically racist.⁵ CRT teacher Derrick Bell explains that "whites" often created policies that "sacrifice the rights of blacks."⁶
- Therefore, CRT supporters oppose the rule of law because, as they claim, the law "systematically privileges subjects who are white," while ignoring the reality that the law aims to create a just and peaceful society for all.⁷
- CRT advocates also call for eliminating capitalism, marriage, traditional family structures, religion, and a republican form of government, which they believe promote white supremacy.⁸

WHAT CRT IS NOT:

- CRT is not an honorable revamp of the Civil Rights movement.
 - As noted earlier, proponents of CRT say the goal of the Civil Rights movement to treat people equally, regardless of race, is "dangerous".⁹
- CRT is not about knowledge or healing. Instead, it is about state-sanctioned racism.¹⁰
- CRT is not a call to treat everyone equally.
 - Ibram X. Kendi, a CRT influencer, calls for a different kind of discrimination saying, "The only remedy to past discrimination is present discrimination."¹¹

Critical Race Theory, despite its name, is a racist, damaging ideology that is antithetical to the America ideals of freedom and equality. Any ideology showing discrimination based on skin color should be condemned by Americans of all races. America continues to make progress in living up to the ideals of our Founding that, "all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."¹² Americans should continue working to this end without using the harmful framework of CRT.¹³

Tragically, CRT is becoming accepted dogma in our schools, businesses, military, governments, and culture.

- For instance, the U.S. Navy published their list of summer reading books available for free including *How to be an Anti-Racist* by Ibram Kendi, a CRT leader and teacher.¹⁴
- In San Jose, California, 3rd graders were asked to deconstruct their racial identities and rank their “power and privilege” as a part of math class.¹⁵ Meanwhile, in Seattle Public Schools, teachers were instructed during training that America is a “race-based white-supremist society” and white teacher should acknowledge and deny their privilege.¹⁶ Also, in Loudoun County, Virginia, parents have created advocacy groups and attended school board meetings decrying CRT.¹⁷
- The Biden Administration has made the way for federal employee training to include CRT indoctrination. President Trump signed Executive Order 13950 on September 22, 2020, which would prohibit any federal workforce training from teaching any anti-American race and sex stereotyping ideology like CRT.¹⁸ However, on January 20, 2021, President Biden revoked the order.¹⁹
- The National Education Association (NEA), the nation’s largest union, approved a plan to promote CRT in K-12 curriculum. The plan includes a promise to have a national day of action to “teach lessons about structural racism and oppression.”²⁰
- At an elementary school in Manchester, Connecticut, teacher Jennifer Tafuto resigned after she was required to teach students to identify literature characters based on the color of their skin rather than by their names. She was also asked during teaching training to reflect on the racial aspects of daily activities like brushing teeth.²¹
- The U.S. Conference of Mayors adopted a resolution in September 2021 stating, “the nation’s mayors support the implementation of CRT in public education curriculum.”²²
- At Wake County Public Schools in North Carolina, teachers were counseled to evaluate the “norms of whiteness” in their schools and pursue a “transformative” restructuring of schools.²³

Congress should work to prevent our country from being destroyed along racial lines by an ideology that is inconsistent with reality. Republicans have introduced bills including H.R. 3163, the Combatting Racist Teaching in School (CRT) Act, H.R. 3134, the Combatting Racist Training in the Military Act, H.R. 3179, the Stop CRT Act, and H.Res. 397, Expressing the sense of the House of Representatives that CRT serves as a prejudicial ideological tool. Additionally, Congress is working to restate Executive Order 13950 with H.R. 3235, To restrict executive agencies from acting in contravention of Executive Order 13950 and H.R. 3249, To codify the policy of Executive Order 13950. Each of these bills seek to rid our schools, military, and federal employee trainings of this destructive theory.

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¹ “‘I have a Dream’ Speech, In Its Entirety.” National Public Radio. January 18, 2010. <https://www.npr.org/2010/01/18/122701268/i-have-a-dream-speech-in-its-entirety> and Eden, Max. “Ban Critical Race Theory Now.” *American Enterprise Institute*. May 5, 2021. https://www.aei.org/op-eds/ban-critical-race-theory-now/?mkt_tok=NDc1LVBCUS05NzEAAAF9HfsbiUQFo9dvN-gdocdr7tB4FzPBiAaYYxh9x-36iEbl5DDxViCU7vF3BEAk3658enMBCX2chgJMBv9BIbyu2K4ebSlhGtukJX0he1MvD_B

² Gonzalez, Mike and Butcher, Jonathan. “State Education Officials Must Restore a Sense of National Character in Public Schools.” The Heritage Foundation. April 22, 2021. <https://www.heritage.org/education/report/state-education-officials-must-restore-sense-national-character-public-schools>

³ Burke, Lindsey and Gonzalez, Mike. “To Tackle Critical Theory in the K-12 Classroom, Start with Colleges of Education.” The Heritage Foundation. October 7, 2020. <https://www.heritage.org/education/commentary/tackle-critical-theory-the-k-12-classroom-start-colleges-education>

⁴ Rufo, Christopher. “Critical Race Theory Would Not Solve Racial Inequality: It Would Deepen It.” The Heritage Foundation. March 23, 2021. <https://www.heritage.org/progressivism/report/critical-race-theory-would-not-solve-racial-inequality-it-would-deepen-it>

- ⁵ Gonzalez, Mike and Butcher, Jonathan. "State Education Officials Must Restore a Sense of National Character in Public Schools." The Heritage Foundation. April 22, 2021. <https://www.heritage.org/education/report/state-education-officials-must-restore-sense-national-character-public-schools>
- ⁶ Bell, Derrick. "White Superiority in America: Its Legal Legacy, Its Economic Costs." Villanova University Charles Widger School of Law Digital Repository. 33 Vill. L. Rev. 767 (1988). Accessed June 2, 2021. <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2612&context=vlr>
- ⁷ Butcher, Jonathan and Gonzalez, Mike. "Critical Race Theory, the New Intolerance, and Its Grip on America." The Heritage Foundation. December 7, 2020. <https://www.heritage.org/civil-rights/report/critical-race-theory-the-new-intolerance-and-its-grip-america>
- ⁸ "Primer: Ending State-Sanctioned Racism." Center for Renewing America. May 5, 2021. <https://americarenewing.com/issues/one-pager-ending-state-sanctioned-racism/>
- ⁹ Eden, Max. "Ban Critical Race Theory Now." *American Enterprise Institute*. May 5, 2021. https://www.aei.org/op-eds/ban-critical-race-theory-now/?mkt_tok=NDc1LVBCUS05NzEAAAF9HfsbiUQFo9dvN-gdocdr7tB4FzPBiAaYYxh9x-36iEblI5DDxViCU7vF3BEAk3658enMBCX2chgJMBv9BIbyu2K4ebSlhGtukJX0he1MvD_B
- ¹⁰ "Primer: Ending State-Sanctioned Racism." Center for Renewing America. May 5, 2021. <https://americarenewing.com/issues/one-pager-ending-state-sanctioned-racism/>
- ¹¹ Eden, Max. "Ban Critical Race Theory Now." *American Enterprise Institute*. May 5, 2021. https://www.aei.org/op-eds/ban-critical-race-theory-now/?mkt_tok=NDc1LVBCUS05NzEAAAF9HfsbiUQFo9dvN-gdocdr7tB4FzPBiAaYYxh9x-36iEblI5DDxViCU7vF3BEAk3658enMBCX2chgJMBv9BIbyu2K4ebSlhGtukJX0he1MvD_B
- ¹² "Declaration of Independence: A Transcription." National Archives. <https://www.archives.gov/founding-docs/declaration-transcript>
- ¹³ "Primer: Ending State-Sanctioned Racism." Center for Renewing America. May 5, 2021. <https://americarenewing.com/issues/one-pager-ending-state-sanctioned-racism/>
- ¹⁴ "U.S. Navy Reading: Checklist." U.S. Navy. https://media.defense.gov/2021/Feb/23/2002587310/-1/-1/1/210223_NAVY%20READING%20BOOK%20CHECKLIST.PDF
- ¹⁵ "3rd Graders in Cupertino Forced to Deconstruct Their Racial Identities, Create Identity Maps and Rank Themselves According to their 'Power and Privilege.'" Parents Defending Education. January 2021. <https://defendinged.org/incidents/cupertino-schools-vice-mayor-raises-concern-over-proposed-ethic-studies-curriculum/>
- ¹⁶ Rufo, Christopher F. "Seattle Teaching Hate: Seattle School District Claims Education System is Guilty of 'Spirit Murder' Against Black Children." December 14, 2020. <https://christopherrufo.com/seattle-teaching-hate/>
- ¹⁷ Cline, Nathaniel. "Rally Opposing Critical Race Theory Held in Leesburg" Loudoun Times-Mirror. June 12, 2021. https://www.loudountimes.com/news/rally-opposing-critical-race-theory-held-in-leesburg/article_9cd04bbe-cbac-11eb-be7a-7b34ad16e9d8.html
- ¹⁸ "Combating Race and Sex Stereotyping." Federal Register. September 28, 2020. <https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping>
- ¹⁹ "Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government." The White House. January 20, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>
- ²⁰ Rufo, Christopher. "Going All In." *City Journal*. July 15, 2021. <https://www.city-journal.org/nea-to-promote-critical-race-theory-in-schools> and https://kansaspolicy.org/wp-content/uploads/2021/07/NEA-Item-39-Documents_20210715_0001.pdf
- ²¹ Dorman, Sam. "Connecticut Teacher resigns over racial curriculum, says it was stealing kids' 'innocence.'" Fox News. August 31, 2021. <https://www.foxnews.com/us/jennifer-tafuto-connecticut-teacher-crt>
- ²² "In Support of Critical Race Theory in Public K-12 Education." 2021 Adopted Resolution. United States Conference of Mayors. https://legacy.usmayors.org/resolutions/89th_Conference/proposed-review-list-full-print-committee-individual.asp?resid=a0F4N00000PTL6pUAH
- ²³ Rufo, Christopher. "Subversive Education." *City Journal*. March 17, 2021. <https://www.city-journal.org/critical-race-theory-in-wake-county-nc-schools> and Lehman, Charles. "What North Carolina parents need to know about critical race theory." *Carolina Journal*. September 3, 2021. <https://www.carolinajournal.com/opinion-article/what-north-carolina-parents-needs-to-know-about-critical-race-theory/>



SECTION 230 PROTECTIONS AND BIG TECH

The 26 words that created the Internet state, “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”
– Section 230 of the Communications Decency Act

Social media platforms have repeatedly canceled and censored political candidates and popular political commentators whose opinions reflect the views of millions of Americans. President Trump’s permanent Twitter and extended Facebook ban in 2021 represent the most high-profile examples of such de-platforming.¹ Moreover, Facebook repeatedly engaged in censorship by displaying so-called “fact-check” warnings and removing posts from users that challenged mainstream media narratives regarding the origin of COVID-19.² Facebook only stopped censoring certain COVID-related posts once the Biden Administration announced it would launch an investigation into the origins of COVID-19 in May 2021.³ Since then, the White House admitted to working with Facebook to censor posts it views as “problematic.”⁴

These actions have prompted calls for Congress to hold Big Tech accountable, with options ranging from critical reforms to an outright repeal of Section 230 of the Communications Decency Act (CDA) of 1996. While Section 230 shields online service providers from certain liability regarding content posted to their platforms by users, this protection is widely misunderstood.

BACKGROUND

Prior to Section 230, federal courts regularly recognized that distributors were not liable for content created by third parties unless they had reason to know the content was illegal.⁵ The 1995 *Stratton Oakmont Inc. v. Prodigy Services Co.* case strayed from this norm and set the precedent for Section 230 standards.⁶ In this case, the New York Supreme Court ruled the defendant, Prodigy, was a publisher and not a distributor after a third-party user posted defamatory content on its platform, even though Prodigy was unaware of the content. The New York Supreme Court found this circumstance was different from similar previous cases because the company moderated user content more than its competitors, which Prodigy engaged in to provide a family-friendly service in accordance with its company values.⁷

At the time, there was bipartisan support in Congress for content moderation, particularly regarding Prodigy’s decency-based moderation of objectionable user content. Following the outcome of the Prodigy case, the sponsors of Section 230 sought to ensure that platforms were not disincentivized from moderating content due to the fear of being held liable for all content on their platform.⁸ Beyond the Prodigy case, researchers have argued that courts had already narrowed liability for publishers and distributors during the years leading up to the passage of Section 230, and that Section 230 just accelerated that process and enshrined the precedent that already existed in common law trends.⁹

WHAT IS SECTION 230?

In 1996, Congress established “Good Samaritan” protections for internet platforms under Section 230. Within Section 230, there are two main liability provisions. The first provision, Section 230(c)(1), states that “no provider

or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹⁰ This text is credited as “the 26 words that created the internet,” and represents the centerpiece of Section 230.¹¹ An example of this is if a user posted defamatory language on Facebook, Facebook would not be liable for it. Although this provision protects the platform when it refrains from censoring content, it does not protect the user from being sued. This protection is where the vast majority of litigation benefits fall for internet platforms and was the centerpiece of the bill.¹²

The second provision, Section(c)(2), states that internet platforms will not be held liable for removing or restricting material posted by a user if in “good faith” the provider finds the material “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”¹³ For example, this protection allows platforms to create technology allowing parents to filter content their children can view on the internet.¹⁴ Some critics argue this provision allows platforms to moderate too much content. Despite this provision’s intended protection for user content, courts have ruled in favor of platforms, as the Free Speech Clause of the First Amendment applies to government, not private companies.¹⁵ Furthermore, courts have ruled that the First Amendment protects content moderation by private companies, a right that extends to digital media and websites, as well as newspapers and broadcast media.¹⁶

OPTIONS FOR CONGRESSIONAL REFORM

The following list includes the major reforms to Section 230 that have been introduced in Congress:

- Repeal Section 230 entirely.
 - As exhibited in the Prodigy case, providers would have incentive to remove and censor even more content if Section 230 were to be repealed, as they would be held liable for content posted by third-party users.
 - Repeal would increase litigation and compliance costs for all companies, not just the large, incumbent ones, who have far more resources to comply with the change. Therefore, this would disproportionately target smaller companies.
 - Even if Section 230 were to be repealed, many critics argue private companies may retain their ability to remove user content due to First Amendment protections.¹⁷
- Narrow Section 230’s liability shield, such as by defining or clarifying the terms “good faith,” “otherwise objectionable,” or “internet content provider” in the law.¹⁸
- Remove Section 230 liability protections for more types of content, such as speech that violates civil rights or cyberstalking laws.¹⁹ In doing so, Congress should clearly define what speech violates such standards.
 - Courts have held online providers liable for third-party user content in circumstances where such content involved inducing illegal content, breach of contract, failure to warn users about illegal activity, or failed to act in good faith.²⁰ In such cases, the courts decided Section 230 liability protections did not apply.
 - In June 2021, the Texas Supreme Court ruled that Facebook was liable for sex trafficking recruitment on its platform under the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), a Section 230 carve out President Trump signed into law in 2018.²¹
- Require increased transparency from platforms regarding their content moderation policies to keep Section 230 protections.²²
- Establish different conditional liability standards ranging from when a platform is not moderating in a politically neutral manner to when a platform is not removing or stopping illegal content or activity on its service after being notified of such content.²³

- ¹ Nick Clegg. In Response to Oversight Board, Trump Suspended for Two Years; Will Only Be Reinstated if Conditions Permit. Facebook. June 4, 2021. <https://about.fb.com/news/2021/06/facebook-response-to-oversight-board-recommendations-trump/>
- ² Taking Action Against People Who Repeatedly Share Misinformation. Facebook. May 2021. https://about.fb.com/news/2021/05/taking-action-against-people-who-repeatedly-share-misinformation/amp/?__twitter_impression=true and Facebook no longer treating ‘man-made’ Covid as a crackpot idea. Politico. May 26, 2021. <https://www.politico.com/news/2021/05/26/facebook-ban-covid-man-made-491053>
- ³ Statement by President Joe Biden on the Investigation into the Origins of COVID-19. The White House. May 26, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/05/26/statement-by-president-joe-biden-on-the-investigation-into-the-origins-of-covid-19/> and The Editorial Board. Facebook’s Lab Leak About-Face. Wall Street Journal. May 27, 2021. <https://www.wsj.com/articles/facebook-lab-leak-about-face-11622154198>
- ⁴ Joe Concha. Hypocritical Psaki leads chilling effort to flag ‘misinformation.’ The Hill. July 18, 2021. <https://thehill.com/opinion/white-house/563547-hypocritical-psaki-leads-chilling-effort-to-flag-misinformation>
- ⁵ The Pact Act and Section 230: U.S. Senate Committee on Commerce, Science, & Transportation and U.S. Senate Subcommittee on Communications, Technology, Innovation, & the Internet, 116th Cong. (2020) (Testimony of Jeff Kosseff) <https://www.commerce.senate.gov/services/files/444EFF87-84E3-46DB-B8DB-24DC9A424869>
- ⁶ Valerie C. Brannon. Liability for Content Hosts: An Overview of the Communication Decency Act’s Section 230. Congressional Research Service. June 6, 2019. <https://fas.org/sgp/crs/misc/LSB10306.pdf>
- ⁷ The Pact Act and Section 230: U.S. Senate Committee on Commerce, Science, & Transportation and U.S. Senate Subcommittee on Communications, Technology, Innovation, & the Internet, 116th Cong. (2020) (Testimony of Jeff Kosseff) <https://www.commerce.senate.gov/services/files/444EFF87-84E3-46DB-B8DB-24DC9A424869>
- ⁸ Valerie C. Brannon. Liability for Content Hosts: An Overview of the Communication Decency Act’s Section 230. Congressional Research Service. June 6, 2019. <https://fas.org/sgp/crs/misc/LSB10306.pdf>
- ⁹ Brent Skorup and Jennifer Huddleston. The Erosion of Publisher Liability in American Law, Section 230, and the Future of Online Curation. Mercatus Center at George Mason University. July 11, 2019. <https://www.mercatus.org/publications/regulation/erosion-publisher-liability-american-law-section-230-and-future-online> and Andrea O’Sullivan. Section 230 Isn’t an Aberration, it’s Distillation of Common Law Trends. Mercatus Center at George Mason University. July 16, 2019. <https://www.mercatus.org/bridge/commentary/section-230-isnt-aberration-its-distillation-common-law-trends>
- ¹⁰ 47 U.S.C. § 230 (1996).
- ¹¹ Stephen Engelberg. Twenty-Six Words Created the Internet. What Will It Take to Save It? ProPublica. February 9, 2021. <https://www.propublica.org/article/nsu-section-230>
- ¹² James Pethokoukis. In Defense of Section 230: My long read Q&A with Jeff Kosseff. AEIdeas. January 1, 2021. <https://www.aei.org/economics/in-defense-of-section-230-my-long-read-qa-with-jeff-kosseff/> and The Pact Act and Section 230: U.S. Senate Committee on Commerce, Science, & Transportation and U.S. Senate Subcommittee on Communications, Technology, Innovation, & the Internet, 116th Cong. (2020) (Testimony of Jeff Kosseff) <https://www.commerce.senate.gov/services/files/444EFF87-84E3-46DB-B8DB-24DC9A424869>
- ¹³ 47 U.S.C. § 230 (1996).
- ¹⁴ The Pact Act and Section 230: U.S. Senate Committee on Commerce, Science, & Transportation and U.S. Senate Subcommittee on Communications, Technology, Innovation, & the Internet, 116th Cong. (2020) (Testimony of Jeff Kosseff) <https://www.commerce.senate.gov/services/files/444EFF87-84E3-46DB-B8DB-24DC9A424869>
- ¹⁵ *Freedom Watch, Inc. v. Google, Inc.*, 368 F. Supp. 3d 30 (D.D.C. 2019) <https://www.courthousenews.com/wp-content/uploads/2020/05/freedom-google.pdf> and *Prager Univ. v. Google LLC*, 951 F.3d 991, 994 (9th Cir. 2020). <https://casetext.com/case/prager-univ-v-google-llc-1>
- ¹⁶ Berin Szóka and Ari Cohn. The Wall Street Journal Misreads Section 230 and The First Amendment. Lawfare. February 3, 2021. <https://www.lawfareblog.com/wall-street-journal-misreads-section-230-and-first-amendment>
- ¹⁷ James Pethokoukis. In Defense of Section 230: My long read Q&A with Jeff Kosseff. AEIdeas. January 1, 2021. <https://www.aei.org/economics/in-defense-of-section-230-my-long-read-qa-with-jeff-kosseff/>
- ¹⁸ Kevin McCarthy. Framework to Stop the Bias and Check Big Tech. June 27, 2021. <https://www.republicanleader.gov/framework-to-stop-the-bias-and-check-big-tech/> and Protect Speech Act, H.R. 8517, 116th Cong. (2020). <https://www.congress.gov/bill/116th-congress/house-bill/8517> and Stop the Censorship Act of 2020, H.R. 4027, 116th Cong. (2020) <https://www.congress.gov/bill/116th-congress/house-bill/4027>
- ¹⁹ Stop Shielding Culpable Platforms Act, H.R. 2000, 117th Cong. (2021). <https://www.congress.gov/bill/117th-congress/house-bill/2000/text?q=%7B%22search%22%3A%5B%22jim+banks%22%5D%7D&r=4&s=5> and CASE-IT Act, H.R. 8719, 116th Cong. (2020). <https://www.congress.gov/bill/116th-congress/house-bill/8719> and PACT Act, S. 797, 117th Cong. (2021). <https://www.congress.gov/bill/117th-congress/senate-bill/797/text> and Protect Speech Act, H.R. 8517, 116th Cong. (2020). <https://www.congress.gov/bill/116th-congress/house-bill/8517> and EARN It Act of 2020, H.R. 8454, 116th Cong. (2020). <https://www.congress.gov/bill/116th-congress/house-bill/8454>
- ²⁰ Ashley Johnson and Daniel Castro. The Exceptions to Section 230: How Have the Courts Interpreted Section 230? Information Technology & Innovation Foundation. February 22, 2021. <https://itif.org/publications/2021/02/22/exceptions-section-230-how-have-courts-interpreted-section-230> and Valerie C. Brannon. Liability for Content Hosts: An Overview of the Communication Decency Act’s Section 230. Congressional Research Service. June 6, 2019. <https://fas.org/sgp/crs/misc/LSB10306.pdf>

-
- ²¹ Adi Robertson. Internet Sex Trafficking Law FOSTA-SESTA is almost never used, says government report. The Verge. June 24, 2021. <https://www.theverge.com/2021/6/24/22546984/fosta-sesta-section-230-carveout-gao-report-prosecutions> and Sex Trafficking Online Platforms and Federal Prosecutions. United States Government Accountability Office. June 2021. <https://www.gao.gov/assets/gao-21-385.pdf>
- ²² Kevin McCarthy. Framework to Stop the Bias and Check Big Tech. June 27, 2021. <https://www.republicanleader.gov/framework-to-stop-the-bias-and-check-big-tech/> and PACT Act, S. 797, 117th Cong. (2021). <https://www.congress.gov/bill/117th-congress/senate-bill/797/text>
- ²³ Ending Support for Internet Censorship Act, S. 1914, 116th Cong. (2019). <https://www.congress.gov/bill/116th-congress/senate-bill/1914> and Pact Act, S. 797, 117th Cong. (2021). <https://www.congress.gov/bill/117th-congress/senate-bill/797?q=%7B%22search%22%3A%22pact+act%22%7D&s=2&r=4> and S. 2448, 117th Cong. (2021). <https://www.congress.gov/bill/117th-congress/senate-bill/2448?s=1&r=1>



PROTECT SUPREME COURT INDEPENDENCE

The Constitution gives the President power to nominate justices to the Supreme Court of the United States (SCOTUS) and the Senate to “Advise and Consent” for confirmation of that nomination.¹ On September 26, 2020, then-President Trump nominated Judge Amy Coney Barrett to succeed the late Justice Ruth Bader Ginsburg to the Supreme Court. Due to the timing of the nomination being months before the election, opponents to the nomination called it an “illegitimate power grab”² and launched public discussions of court packing that continue today. These discussions ignore important lessons from the long history of the Court.

- At least 11 candidates were open to packing the Court during the 2020 Democratic Presidential primary.³
 - Vice President Kamala Harris, for example, stated in 2019 that, “We are on the verge of a crisis of confidence in the Supreme Court,” and, “everything is on the table” to combat this challenge.⁴
- On April 9, 2021, President Joe Biden announced the formation of the Presidential Commission on the Supreme Court of the United States to analyze the need for expanding the Supreme Court, among other reforms.⁵

SCOTUS Nominations During Election Years

- The current nomination process is abnormally long and difficult. For the first three-quarters of the Court’s existence, nominees waited a median of one week to receive either confirmation or rejection.⁶
 - Public, televised hearings attended by the nominee, the most significant cause of recent time delays, did not occur until 1981.
- Judicial nominations also took place in election years throughout the country’s history. Many of these nominations, including 90% of those made through 1968 before an election in an election year, were confirmed.⁷
- Supreme Court vacancies occurred 29 times during presidential election years or a lame-duck session before the next inauguration. These have taken place under the administrations of 22 different presidents, each of whom made a nomination to fill the vacancy.⁸
- Between 1796 and 1968, 19 nominations occurred in an election year when the same party held the Senate majority and the presidency. 9 of the 10 pre-election nominations were confirmed.^{9,10}

Court Packing

- Court packing is the process of expanding the size of the Supreme Court past the current 9 justices in order to, as the late Justice Ginsburg said, “have more people who will vote the way you want them to.”¹¹

- The Constitution does not require that the Supreme Court have a specific number of justices. Instead, Congress sets the number via statute.¹²
 - Court packing is not a new concept. The most notable attempt to pack the court came from President Franklin D. Roosevelt in 1937. After the Court repeatedly overturned his New Deal, he introduced a plan to appoint a new judge in all federal courts for each judge older than 70 that chose not to resign or retire.¹³ The Senate Judiciary Committee found that the purpose of the legislation was, “to increase the number of Justices for the express purpose of neutralizing the views of some of the present members.”¹⁴
- Attempts to influence the Court through court packing have been unsuccessful for over 150 years¹⁵ and widely condemned as a significant threat to the independence of the Court.
- Court packing would destroy the critical independence of the judicial branch.
 - It would serve as a means for Congress to reverse the Court’s rulings by enlarging the Court.
 - It would transform the Court into a highly partisan institution¹⁶ and limit the Court’s ability to provide a check on Congress’ power.¹⁷
- The Biden Commission’s October 2021 discussion materials highlighted concerns with expanding the Court, stating, “[T]he risks of Court expansion are considerable, including that it could undermine the very goal of some of its proponents of restoring the Court’s legitimacy.”¹⁸

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¹ U.S. Const. art. 2 § 2 cl. 2 Accessed 09/23/20 at <https://constitution.congress.gov/constitution/>

² “Warren won’t meet with Barrett (...)” by Justine Coleman. Accessed 09/30/20 at <https://thehill.com/homenews/senate/518802-warren-wont-meet-with-trumps-supreme-court-nominee-calling-it-illegitimate>

³ “Where Democrats stand” Accessed 09/24/20 at https://www.washingtonpost.com/graphics/politics/policy-2020/voting-changes/supreme-court-packing/?itid=lk_inline_manual_8&itid=lk_inline_manual_29

⁴ “2020 Dems warm to expanding (...)” by Burgess Everett and Marianne Levine. Accessed 09/24/20 at <https://www.politico.com/story/2019/03/18/2020-democrats-supreme-court-1223625>

⁵ <https://www.whitehouse.gov/presidential-appointments/>

⁶ From the appointment of the Supreme Court’s first justices in 1789 until 1966, a median of 7 days passed between when a nomination was first sent to the Senate and a final action was taken on the nomination. “Supreme Court Nominations, 1789 to 2017” by Barry McMillion and Denis Steven Rutkus. Accessed 09/23/20 at <https://crsreports.congress.gov/product/pdf/RL/RL33225>

⁷ “ICYMI: History Is On the Side of Republicans Filling a Supreme Court Vacancy in 2020” by Dan McLaughlin Accessed 09/29/20 at <https://www.grassley.senate.gov/news/news-releases/icymi-history-side-republicans-filling-supreme-court-vacancy-2020>

⁸ *Id.*

⁹ *Id.*

¹⁰ Associate Justice Abe Fortas was nominated by President Lyndon Johnson to be elevated to Chief Justice in 1968. His nomination was rejected. Justice Fortas later resigned amid an ethics inquiry in 1969.

¹¹ “Is it possible to Expand the Supreme Court?” from a radio show with Mary Louise Kelly and Judge Glock. Accessed 09/24/20 at <https://www.npr.org/2020/09/21/915381446/is-it-possible-to-expand-the-supreme-court>

¹² The Judiciary Act of 1869 set the court at nine justices and that has been the case for over 150 years. “An Act to Amend the Judicial System” Accessed 09/29/20 at <https://www.loc.gov/law/help/statutes-at-large/41st-congress/session-1/c41s1ch22.pdf>

¹³ “What is Court Packing, and Why Are Some Democrats Seriously Considering It?” by Amber Phillips. Accessed 09/24/20 at <https://www.washingtonpost.com/politics/2020/09/22/packing-supreme-court/>

¹⁴ “No to ‘Packing the Court’ by Thomas Jipping. Accessed 09/29/20 at <https://www.heritage.org/courts/commentary/no-packing-the-court>

¹⁵ “What is Court Packing, and Why Are Some Democrats Seriously Considering It?” by Amber Phillips. Accessed 09/24/20 at <https://www.washingtonpost.com/politics/2020/09/22/packing-supreme-court/>

¹⁶ “Is it possible to Expand the Supreme Court?” by Mary Louise Kelly and Judge Glock. Accessed 09/24/20 at <https://www.npr.org/2020/09/21/915381446/is-it-possible-to-expand-the-supreme-court>

¹⁷ “Expressing the sense of the House of Representatives (...)” by Rep. Jim Jordan. Accessed 09/24/20 at https://republicans-judiciary.house.gov/wp-content/uploads/2020/09/KD_001_xml.pdf

¹⁸ https://www.whitehouse.gov/wp-content/uploads/2021/10/MEMBERSHIP-AND-SIZE-OF-THE-COURT_.pdf



BIDEN GUN CONTROL ORDERS

In the wake of mass shooting tragedies, Democrats and gun control activists often call for reactive federal policies that target legal gun ownership and fail to address the underlying causes of such homicides.

In April 2021, President Biden announced six executive actions on gun control, which included: 1) classifying pistol-stabilizing braces as short-barreled rifles; 2) directing the Department of Justice (DOJ) to review state red flag laws and develop model legislation; and 3) cracking down on “ghost guns.”¹

Stabilizing Braces Are Accessories, Not Rifles

- The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) issued a proposed rule to reclassify firearms with stabilizing braces,² also known as pistol braces, as short-barreled rifles. Short-barreled rifles are rifles with a barrel length under 16 inches³ and are subject to taxation, identification, and registration requirements under federal law.⁴ Under ATF’s rule, firearms with a stabilizing brace accessory would be subject to these same requirements, as if they were a rifle.
- Stabilizing braces are often used to assist disabled gun owners, including combat veterans.⁵ An estimated 10 to 40 million Americans own stabilizing braces.⁶ Under ATF’s proposed rule, most owners of these accessories would be subject to a \$200 tax per weapon.⁷
- Even under the Obama administration, ATF affirmed stabilizing braces did not convert a firearm into a short-barreled rifle. To date, 48 Senate Republicans and 141 House Republicans oppose ATF’s proposed rule.⁸

“Red Flag” Laws Raise Due Process Concerns

- Red flag laws, also known as Extreme Risk Protection Orders (ERPO) or Gun Violence Restraining Orders, allow certain persons – generally, family members or law enforcement officers – to petition a court to order the removal of firearms from an individual alleged to pose a risk to himself or others. These orders are issued ex parte, which is done without the individual’s knowledge or opportunity to respond. Such confiscation orders can often be issued regardless of whether that person has committed any crimes or been diagnosed with mental illness. 19 states and D.C. have red flag laws.⁹
- An April 2020 report by the RAND Corporation found the effects of state red flag laws inconclusive to the outcomes of shootings. In fact, the report “found no qualifying studies” showing that state red flag laws decreased mass shootings, violent crime, officer-involved shootings, and other outcomes, based on their criteria.¹⁰
- Violations of the Second Amendment and the Fifth and Fourteenth Amendment rights to due process suggest red flag laws are unconstitutional and subject to abuse. Advocates claim these laws do not violate due process, as noncriminal individuals can appeal to courts to reclaim their seized firearms. However, as economist Raheem Williams notes, this argument implies “the Second Amendment is a privilege, not a right.”¹¹
- The American Civil Liberties Union (ACLU) has opposed red flag laws and legislation as an overbroad violation of civil rights that require little to no “proof of dangerousness,” are founded in speculation rather than evidence-based measures, and reinforce negative stereotypes and privacy violations.¹²
- Red flag laws can pose a danger to law enforcement and the individual, who is often unaware that confiscation orders have been issued or petitioned. In 2018, two Maryland police officers shot and killed a 61-year-old man in his home after tensions escalated during a 5:17 a.m. firearm seizure.¹³

- As one state attorney in Windsor County, Vermont, stated, “...I believe the mention of red flag laws in response to what happened in El Paso and in Dayton is a bit disingenuous. It’s intended to be a distraction...To say that red flag laws would solve the problem of mass shootings would be to suggest that all you need to do surgery is a scalpel.”¹⁴

Tracing “Ghost Guns”

- Ghost guns broadly refer to privately made firearms by an unlicensed manufacturer without a traceable serial number.¹⁵ Private individuals can order kits online to assemble these homemade guns with simple tools.¹⁶ DOJ issued a proposed rule to crack down on “ghost guns” in May 2021, which would target gun kits as if they were the same as fully functional firearms, and “80% receivers” as if they were finished receivers.¹⁷
- California implemented a ban on “ghost guns” in 2018. Within two years of the ban, however, a special agent with the ATF Los Angeles division claimed that 41% of the guns they encountered were the guns that were banned, further proving that criminals do not care about laws or bans.¹⁸

Baltimore is ground zero for gun control failure. It is one of many cities that experience high levels of violence despite having the strongest gun control laws across the country.

- Baltimore, Maryland was counted among the highest murder rates of all major reporting populated cities in the U.S. in 2019, according to Statista.¹⁹
- The *Baltimore Sun* found that 2019 was the state’s second-deadliest record in its history, with a total of 348 homicides.²⁰ Baltimore has consistently experienced more than 300 homicides per year over the past six years.
- Gun control advocates claim that high violence rates in states and cities with strict gun laws occur because of surrounding areas with lax gun laws and restrictions. Thus, they call for federal gun control. However, this argument fails to address that violence occurs due to the actions of law-breaking criminals – not law-abiding citizens who own firearms – who defy the law regardless of whether it is enforced on a federal, state, or local level.

Federalism and civil liberties, including the right to keep and bear arms, are founding principles of the United States. The Republican Policy Committee has released a companion brief, entitled *The Gun Control Glossary*, to further define and provide more background on these issues.

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¹ The other 3 executive actions included: d) A comprehensive DOJ report on firearms trafficking across the U.S.; e) Directing \$1 billion in taxpayer dollars to “evidence-based community violence intervention programs;” and f) Nomination of David Chipman to serve as ATF Director. FACT SHEET: Biden-Harris Administration Announces Initial Actions to Address the Gun Violence Public Health Epidemic | The White House

² Stabilizing braces “are devices that can be attached to the rearward portion (breech) of a handgun or other pistol grip firearm’s frame or receiver.”

³ Federal law defines short-barreled rifles as “a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.” ⁷

⁴ Ghost Guns, Stabilizing Braces, and Red Flag Laws: Overview of Recent Executive Actions on Firearms (crs.gov)

⁵ Ghost Guns, Stabilizing Braces, and Red Flag Laws: Overview of Recent Executive Actions on Firearms (crs.gov)

⁶ Handguns, Stabilizing Braces, and Related Components (congress.gov)

⁷ What is the tax on the transfer of an NFA firearm? | Bureau of Alcohol, Tobacco, Firearms and Explosives (atf.gov) and ATF 2021R-08

⁸ Kennedy, Republican senators oppose Biden administration’s ban on gun braces - Press releases - U.S. Senator John Kennedy (senate.gov) and Hudson Leads 140 Members Calling on ATF to Withdraw Stabilizing Brace Rule | Congressman Richard Hudson (house.gov)

⁹ California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, Washington, and the District of Columbia. Red flag laws: What they are and which states have them - CNN and Ghost Guns, Stabilizing Braces, and Red Flag Laws: Overview of Recent Executive Actions on Firearms (crs.gov)

¹⁰[The Effects of Extreme Risk Protection Orders | RAND](#) and Separate evidence is further inconclusive across Connecticut, the first state to enact a red flag law, as well as Indiana, California, Florida, and Maryland, while Washington, D.C.'s red flag law has gone unused. 7 Reasons to Oppose Red Flag Guns Laws - Foundation for Economic Education ([fee.org](#)) and How a 'Red Flag' Law Failed in Indiana - The New York Times ([nytimes.com](#)) and Circumstances and Outcomes of a Firearm Seizure Law: Marion County, Indiana, 2006-2013 - PubMed ([nih.gov](#))

¹¹ Red Flag Gun Laws Turn Due Process on Its Head - Foundation for Economic Education ([fee.org](#)) and 7 Reasons to Oppose Red Flag Guns Laws - Foundation for Economic Education ([fee.org](#))

¹² The ACLU's Position on Gun Control | American Civil Liberties Union and 180302 analysis RedFlagsLegislation ([riacclu.org](#)); Red flag laws are subject to abuse. A University of Central Florida student, for example, was threatened with a year-long risk protection order under red flag laws for saying "stupid" things on Reddit after a mass shooting, even though the student did not have a criminal history or own a firearm. 7 Reasons to Oppose Red Flag Guns Laws - Foundation for Economic Education ([fee.org](#))

¹³ Maryland officers serving "red flag" gun removal order fatally shoot armed man - CBS News

¹⁴ In Vermont, A Case Of One Man Whose Gun Was Seized Under Red Flag Law : NPR

¹⁵ <https://www.crs.gov/Reports/LSB10592?source=search&guid=87efb43c43234d21b46e3fed203db51d&index=1>

¹⁶ I Made an Untraceable AR-15 'Ghost Gun' in My Office—and It Was Easy | WIRED

¹⁷ "80% receivers" are partially finished frames and receivers, due to being 80% completed. Justice Department Proposes New Regulation to Update Firearm Definitions | OPA | Department of Justice and Federal Register :: Definition of "Frame or Receiver" and Identification of Firearms and Fact Sheet: Biden-Harris Administration Announces Comprehensive Strategy to Prevent and Respond to Gun Crime and Ensure Public Safety | The White House and Remarks by President Biden and Attorney General Garland on Gun Crime Prevention Strategy | The White House. Breaking Down Biden's Proposed "Ghost Gun" Rules | The Heritage Foundation

¹⁸ 'Ghost guns' investigation: Law enforcement seeing unserialized firearms on daily basis in Southern California - ABC7 Los Angeles

¹⁹ <https://www.statista.com/statistics/718903/murder-rate-in-us-cities-in-2019/>

²⁰ <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-2019-homicide-final-count-20200101-jnauuumukbdh3edsyypspsm3he-story.html>



DISHONEST DEMOCRAT GUN GRABS

In the wake of mass shooting tragedies, Democrats regularly advocate for reactive gun control policies that range from misinformed to dishonest to unconstitutional. These proposals rarely address the underlying causes of gun-related homicides. In an April 2021 address, President Biden called on Congress to pass such misguided legislation, including a ban on so-called “assault weapons” and high-capacity magazines, and to pass two bills expanding background checks.¹

Assault Weapons are Broadly Defined. Bans are Futile and Unconstitutional

- An assault weapon is broadly defined across a patchwork of federal and state laws. The gun industry typically considers firearms with “select fire capabilities” to be assault weapons. In some states, a paintball gun is considered an assault weapon.²
- Despite advocating for a ban on assault weapons, Biden’s former Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) nominee, David Chipman, was unable to provide a concrete definition for assault weapons during his Senate confirmation hearing, before his nomination was withdrawn in September 2021.³
- The Assault Weapons Ban Act of 1994, which expired in 2004, posed as no serious deterrent to criminals with multiple studies finding the law had little effect on decreasing firearm homicides.⁴ Therefore, the law only restricted the rights of those who chose to abide by it.
- California’s 32-year assault weapons ban was overturned in federal district court on June 4, 2021 with the judge declaring the ban unconstitutional.⁵ The 9th Circuit Court of Appeals has temporarily blocked the ruling as the court awaits the outcome of another case.⁶

The AR-15 is not a “Weapon of War”

- AR-15s are a prime target of gun control activists, who often falsely claim an AR-15 is a “weapon of war.”⁷ According to Sen. Jeanne Shaheen (D-NH), “The fact is, the AR-15...that’s a weapon of war...Somebody who is buying that kind of a weapon isn’t buying it for target shooting. They’re not buying it to go out and hunt deer...They’re buying it to do bad things.”⁸
- AR-15s are the most popular civilian rifle in America and are often used for shooting sports and recreation, hunting small game, and personal defense.⁹ Contrary to popular belief, AR-15s are not “weapons of war,” or military-grade weapons,¹⁰ or an assault rifle.¹¹ The AR-15 is a semi-automatic rifle named after its original distributor, the ArmaLite, Inc., rifle model 15. AR-15s and other similar semiautomatic rifles conservatively represent about 4% of 393 million civilian firearms in the U.S., according to available industry estimates.¹²
- U.S. District Judge Roger Benitez of the Southern District of California compared AR-15s to a swiss army knife in his June 2021 ruling, stating, “Like the swiss army knife, the popular AR-15 rifle is a perfect combination of home defense weapon and homeland defense equipment.”¹³
- Handguns, not AR-15s or other rifles, are the most common firearm used in shooting-related deaths. However, none of the Biden Administration’s gun control proposals directly address handguns, as the Supreme Court ruled handguns are protected under the Second Amendment.¹⁴ Vice President Harris reportedly owns a handgun for personal defense.¹⁵

Universal Background Checks are Ineffective

- All firearm transfers between distributors and private citizens, as well as any interstate transfer of a handgun, must include a background check. Any person “engaged in the business” of selling firearms must run a background check through the National Instant Criminal Background Check System (NICS) to sell a firearm to an individual.¹⁶
- Straw purchases are already illegal and constitute a felony under federal law. However, criminals may still use straw-buyers to circumvent any universal background check system.
- Dr. Garen Wintermute, a professor and self-described gun control advocate at University of California, Davis (UC Davis), authored a 2018 study that found background checks did not have an effect on gun-related deaths in Indiana and Tennessee in 2016,¹⁷ consistent with other findings on background checks. A 2019 study by Dr. Wintermute yielded the same conclusion for California in 1991 during the state’s first decade with universal background check laws.¹⁸
- Background checks would not have prevented the Sandy Hook shooting, as the firearms were owned by the shooter’s mother, who would have passed a background check. The shooter’s mother also registered 5 firearms with the state of Connecticut in her home, three of which were stolen by her son.
- Background checks would not have prevented other high-profile mass shootings – such as the 2019 shootings in El Paso, TX, and Dayton, OH– due to the lack of a significant criminal record.¹⁹
- Even if America had stricter background check laws, people often lie on their forms. For example, *Politico* reports Hunter Biden may have lied on his background check form regarding substance abuse in order to purchase a handgun.²⁰

High-Capacity Magazine Bans are Red Herrings

- President Biden has called on Congress to ban high-capacity magazines, which is a term of art that generally refers to a magazine that can hold over 10 rounds of ammunition.²¹ On June 24, 2021, Biden claimed owning high-capacity magazines was unnecessary, “unless you think the deer are wearing Kevlar vests or something.”²²
- A three-judge panel of the 9th Circuit Court of Appeals overturned California’s ban on high-capacity magazines in 2020, ruling the ban was unconstitutional.²³ However, the full 9th Circuit overturned this decision, reinstating the ban on November 30, 2021.²⁴
- A high-capacity magazine ban is unlikely to prevent mass shootings. A Columbine shooter, for example, used a Hi-Point 995 carbine rifle that used 10-round magazines, however, he had 13 of them. Similarly, this magazine ban would not have affected the Virginia Tech shooter, who used handguns with 17 magazines.²⁵
- In 2013, Sen. Dianne Feinstein (D-CA) claimed “...it’s legal to hunt humans with 15-round, 30-round, even 150-round magazines,” while calling for a ban on high-capacity magazines.²⁶ It is illegal to hunt human beings, regardless of the weapon of choice.

Less than 1% of Firearm Deaths are Mass Shootings

- 60% of gun-related deaths are suicides in an average year;²⁷
- About 30% of firearm deaths are homicides that do not meet the FBI’s definition of an “active shooter” incident, such as domestic and gang violence episodes;
- 1% are unintentional shootings;²⁸ and,
- Less than 1% of the nearly 40,000²⁹ gun-related deaths in 2019³⁰ were caused by mass shootings. UC Davis reports that mass shootings accounted for 0.2% of all total firearm-related deaths in 2019.³¹

Federalism and civil liberties, including the right to keep and bear arms, are founding principles of the United States. The Republican Policy Committee has released a companion brief, entitled *The Gun Control Glossary*, to further define and provide more background on these issues.

- ¹ FACT SHEET: Biden-Harris Administration Announces Initial Actions to Address the Gun Violence Public Health Epidemic | The White House, Apr. 7, 2021; H.R. 8, the Bipartisan Background Checks Act of 2021, 117th Congress, has 210 cosponsors at the time of this brief.
- ² David B. Kopel, “Defining ‘Assault Weapons,’” <https://www.theregreview.org/2018/11/14/kopel-defining-assault-weapons/> and Jeff Daniels, “Definition of what’s an ‘assault weapon’ is a very contentious issue,” <https://www.cnn.com/2018/02/21/definition-of-whats-an-assault-weapon-is-a-very-contentious-issue.html>.
- ³ Jacob Sullum, Reason, “Biden’s Nominee to Head the ATF, Who Wants Congress to Ban ‘Assault Weapons,’ Says He Can’t Define Them,” at https://reason.com/2021/06/20/bidens-nominee-to-head-the-atf-who-wants-congress-to-ban-assault-weapons-says-he-cant-define-them/?itm_source=parsely-api
- ⁴ Grant Duwe, “Patterns and prevalence of lethal mass violence,” <https://onlinelibrary.wiley.com/doi/abs/10.1111/1745-9133.12478> and Robert Farley, “Fact Checking Biden’s Claim that Assault Weapons Ban Worked,” <https://www.factcheck.org/2021/03/factchecking-bidens-claim-that-assault-weapons-ban-worked/> and Cameron McWhirter, “America’s Failed Attempt to Ban Assault Weapons,” <https://www.wsj.com/articles/americas-failed-attempt-to-ban-assault-weapons-11617285945>
- ⁵ *Miller v. Bonta*, 19-cv-1537-BEN (JLB) (2021) and “California assault weapons ban overturned: Judge Roger Benitez likens AR-15 to Swiss Army knife in ruling,” <https://www.washingtonpost.com/nation/2021/06/05/california-assault-weapons-ban-overturned/>
- ⁶ “Appeals Court Blocks Ruling That Overturned California’s Assault Weapons Ban,” <https://www.nytimes.com/2021/06/22/us/assault-weapons-ban-california.html>
- ⁷ Peter Suci, “Please Stop Calling the AR-15 a ‘Weapon of War,’” <https://nationalinterest.org/blog/reboot/please-stop-calling-ar-15-weapon-war-179987>
- ⁸ Andrew Kaczynski, “Democratic Senator: People Getting The AR-15 Are ‘Buying It To Do Bad Things,’” <https://www.buzzfeednews.com/article/andrewkaczynski/democratic-senator-people-getting-the-ar-15-are-buying-it-do#.on7WlZ8Lq>
- ⁹ An estimated 16 million Americans own semiautomatic rifles, including AR-15s. “Modern Sporting Rifle: Introduction,” <https://www.nssf.org/msr/> It is illegal in many states – such as Virginia, Illinois, and Colorado – to use the same standard cartridge which the AR-15 fires to hunt large game because the round is deemed “underpowered.” Examples of sporting hunt recreation events include the Service Rifle Competition, “Across the Course” Matches, the Precision Rifle Series, and Multi-Gun matches.
- ¹⁰ <https://texasscorecard.com/commentary/commentary-lies-the-left-tells-about-guns/>
- Note on AR-15 Use of High-Velocity Rounds: The standard AR-15 round leaves the end of the muzzle at an average of 3,000 feet per second. This speed is highly variable based a combination of factors, and can vary between 1,000 feet per second and 3,500 feet per second depending on various combinations of the projectile and powder, the barrel length, temperature, air pressure, and other factors. The muzzle velocity of a round is a fact of physics, and not a factor that acts in favor of criminals and those wishing to do ill.
- ¹¹ The gun industry typically considers an “assault weapon” to be a firearm with “select fire capabilities.” Jeff Daniels, “Definition of what’s an ‘assault weapon’ is a very contentious issue,” <https://www.cnn.com/2018/02/21/definition-of-whats-an-assault-weapon-is-a-very-contentious-issue.html> and Jon Stokes, “Why millions of Americans — including me — own the AR-15,” <https://www.vox.com/2016/6/20/11975850/ar-15-owner-orlando>
- ¹² Calculating U.S. firearms is highly difficult due to lack of data and recordkeeping. The Small Arms Survey estimates there are about 393 million civilian firearms in the U.S. Of that total, gun industry estimates for AR-15s, AK-47s, and other similar semiautomatic rifles, range from about 8 million to 16 million in the U.S. Aaron Karp, Estimating Global Civilian-Held Firearms Numbers, Small Arms Survey, <https://www.smallarmssurvey.org/sites/default/files/resources/SAS-BP-Civilian-Firearms-Numbers.pdf>. See also Modern Sporting Rifle: Introduction • NSSF at <https://www.nssf.org/msr/> and Modern Sporting Rifle: America’s Rifle • NSSF at <https://www.nssf.org/msr-americas-rifle/>.
- ¹³ U.S. District Court Southern District of California, Case No.: 19-cv-1537-BEN (JLB), at <https://oag.ca.gov/system/files/attachments/press-docs/Decision%20--%20Miller%2020210604.pdf> and Timothy Bella and Rachel Siegel, Washington Post, “California assault weapons ban overturned as federal judge compares AR-15 to swiss army knife, at <https://www.washingtonpost.com/nation/2021/06/05/california-assault-weapons-ban-overturned/>.
- ¹⁴ See *DC v. Heller*, 554 US 570 (2008) and *McDonald v. Chicago*, 557 U.S. 965 (2009).
- ¹⁵ Kyung Lah, CNN, “Kamala Harris talks about owning a gun: ‘I was a career prosecutor,’” 2019, at <https://www.cnn.com/2019/04/11/politics/kamala-harris-gun-owner/index.html> and Peter Funt, “Kamala Harris owns a handgun. That’s disqualifying for a 2020 Democrat in my book,” 2019, at <https://www.usatoday.com/story/opinion/2019/04/26/kamala-harris-owns-handgun-unacceptable-2020-democratic-race-column/3567371002/>.
- ¹⁶ Despite these requirements, NICS is missing millions of records in its database.
- ¹⁷ Nat’l Institutes of Health, Repeal of Comprehensive Background Check Policies and Firearm Homicide and Suicide, 2018, at <https://pubmed.ncbi.nlm.nih.gov/29613872/>.
- ¹⁸ Science Direct, *California’s comprehensive background check and misdemeanor violence prohibition policies and firearm mortality*, at <https://www.sciencedirect.com/science/article/abs/pii/S1047279718306161?via%3Dihub>.
- ¹⁹ Tara Law, Time, “Background checks won’t stop most mass shootings. We need them anyway, experts say” Aug. 2019, at <https://time.com/5648987/mass-shootings-background-checks/>.
- ²⁰ Tara Palmieri, Politico, “Sources: Secret Service inserted itself into case of Hunter Biden’s gun,” at <https://www.politico.com/news/2021/03/25/sources-secret-service-inserted-itself-into-case-of-hunter-bidens-gun-477879> and Zachary Evans,

National Review, “Hunter Biden reportedly violated federal law by lying on background check,” at <https://news.yahoo.com/hunter-biden-reportedly-violated-federal-152649044.html>.

²¹ The White House, *supra* at 1.

²² Remarks by President Biden and Attorney General Garland on Gun Crime Prevention Strategy | The White House Jun. 23, 2021 at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/06/23/remarks-by-president-biden-and-attorney-general-garland-on-gun-crime-prevention-strategy/>.

²³ Michael Levenson, New York Times, “California’s Ban on High-Capacity Magazines Violates the Second Amendment, Court Rules,” Aug. 14, 2020, at <https://www.nytimes.com/2020/08/14/us/california-magazines-ban.html>.

²⁴ Don Thompson, “Gov. Gavin Newsom touts ‘huge victory’ as court upholds California ban on high-capacity magazines,” Nov. 30, 2021, at <https://www.usatoday.com/story/news/nation/2021/11/30/california-ban-high-capacity-gun-magazines/8811262002/>.

²⁵ Matt MacBradaigh, “Gun Control Facts: Why a ‘High Capacity’ Magazine Ban Would Not Prevent Mass Shootings,” 2013, at <https://www.mic.com/articles/24263/gun-control-facts-why-a-high-capacity-magazine-ban-would-not-prevent-mass-shootings>.

²⁶ Dianne Feinstein: ‘It’s legal to hunt humans’ with high-capacity magazines [VIDEO] | The Daily Caller

²⁷ Warren Fiske, PolitiFact, “62% of U.S. gun deaths are suicides,” 2019, at <https://www.politifact.com/factchecks/2019/aug/21/jason-miyares/62-us-gun-deaths-are-suicides/#:~:text=There%20were%20335%2C746%20gun%20deaths,That%27s%2062%25>.

²⁸ UC Davis Health, University of California at Davis, Facts and Figures, at <https://health.ucdavis.edu/what-you-can-do/facts.html>.

²⁹ The CDC reported 39,707 gun-related deaths in the U.S. in 2019. Centers for Disease Control and Prevention, Underlying Cause of Death, 1999-2019 Results Form ([cdc.gov](https://www.cdc.gov)), and <https://www.cdc.gov/nchs/fastats/injury.htm>.

³⁰ *Id.*

³¹ UC Davis Health, *supra* at 28, and Mass shootings are rare – firearm suicides are much more common, and kill more Americans | PBS NewsHour and Active Shooter Incidents in the United States in 2019 — FBI



REQUIRE ACCURATE NATIONAL ABORTION DATA

Often-cited abortion data compiled by the Centers for Disease Control and Prevention (CDC) may be misleading, underreported, or incomplete. This leaves Congress and the public with inaccurate information about the current state of abortions in America.

BACKGROUND

In recent years, states have enacted a wide array of new abortion laws.¹ CDC abortion data, which is often featured in press articles and used to justify the passage of such laws, may be misleading, underreported, or incomplete.

Currently, the CDC produces an annual Abortion Surveillance report comprised of abortion data requested from 52 “reporting areas,” which include all 50 states, the District of Columbia, and New York City.² According to the report, nine states and the District of Columbia have no absolute gestational age limit when abortions may be performed prior to birth.³

However, the figures featured in this report do not provide a full account of abortions in America. Currently, federal law does not require state data standardization or reporting to the Federal Government. As a result, some of the data, which could materially alter statistical information, is absent. For example, the CDC’s 2015 report states that about 1.3 percent of abortions occurred at or after 21 weeks of gestation.⁴ This figure is regularly featured in news articles and media reports as a representation of late-term abortions nationwide.⁵

Those reports are misleading because the CDC report includes data from only 39 states and New York City.⁶ At least 12 states, including the District of Columbia, either did not report statewide gestational age figures or did not meet reporting standards.⁷ The CDC has largely attributed this gap in data to the existing system of voluntary disclosure by each individual state through “their independent surveillance systems.”⁸

According to the CDC, because the “collection and reporting of abortion data are not federally mandated,” many states have developed their own data collection forms, and “therefore do not collect or provide all of the information or level of detail” included in the CDC’s report.⁹

POLICY SOLUTIONS

Congress should pass legislation requiring state disclosure of abortion data—including information related to the gestational age of aborted fetuses and the number of children who survive an attempted abortion—in a standardized, machine-readable format as a condition of receiving certain federal awards.

H.R. 581, the Ensuring Accurate and Complete Abortion Data Reporting Act of 2021¹⁰ would accomplish these objectives.

¹ Anna North, *While some states try to ban abortion, these states are expanding access*, Vox, June 12, 2019, <https://www.vox.com/identities/2019/6/12/18662738/abortion-bill-illinois-maine-laws-new-york>.

² Tara C. Jatlaoui, Maegan E. Boutot, Michele G. Mandel, Maura K. Whiteman, Angeline Ti, Emily Petersen, and Karen Pazol, *Abortion Surveillance – United States, 2015*, Morbidity and Mortality Weekly Report, Surveillance Summaries, Nov. 23, 2018, <https://www.cdc.gov/mmwr/volumes/67/ss/ss6713a1.htm>.

³ Nine states allow abortions in the third trimester under several exceptions: Alaska, Colorado, Illinois, New Hampshire, New Jersey, New Mexico, New York, Oregon and Vermont.

⁴ See *supra*, note 2, at Table 7.

⁵ Jen Gunter, *Dear Donald Trump: I'm an OB-GYN. There are no 9-month abortions*, Vox, Oct. 21, 2016, <https://www.vox.com/first-person/2016/10/21/13352872/donald-trump-abortion-wrong> and Vivian Wang, *Trump, Pence Lead G.O.P. Seizure of Late-Term Abortion as a Potent 2020 Issue*, New York Times, Jan. 31, 2019, <https://www.nytimes.com/2019/01/31/nyregion/late-term-abortion-pence-trump-republicans.html> and Kim Painter, *Ripped from the womb? Late-term abortion explained*, USA Today, Oct. 21, 2016, <https://www.usatoday.com/story/news/2016/10/21/doctors-trump-wrong-late-abortions/92515324/>.

⁶ Jatlaoui, Boutot, Mandel, Whiteman, Ti, Petersen, and Pazol, *supra*, note 2.

⁷ The 12 states, including the District of Columbia, are California, Connecticut, District of Columbia, Florida, Illinois, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Wisconsin and Wyoming.

⁸ Jatlaoui, Boutot, Mandel, Whiteman, Ti, Petersen, and Pazol, *supra*, note 2.

⁹ *Id.*

¹⁰ <https://www.congress.gov/117/bills/hr581/BILLS-117hr581ih.pdf>



VOTING RIGHTS ACT

Congress enacted the bipartisan Voting Rights Act of 1965 (VRA) to eliminate widespread practices that suppressed Black Americans from exercising their right to vote. In addition to providing nationwide voting rights protections, it established federal government oversight of jurisdictions that, at the time, engaged in egregious voting discrimination.

The VRA is regarded as one of the most successful pieces of legislation ever passed by Congress, resulting in the eradication of barriers that blocked minority participation in elections. Widespread voting suppression no longer exists in America and minority participation continues to increase:

- In the 2012 presidential election, Black Americans (66.2%) voted at a higher rate than White Americans (64.1%).¹
- According to the Census Bureau, 63% of Black Americans of voting age turned out in the 2020 elections, compared to 61% in 2016.²
- Asian American participation increased 10 percentage points to result in a 59% participation rate in 2020, compared to 49% in 2016.³

BACKGROUND

Section 2. The heart of the VRA is Section 2, which prohibits every state and local government from imposing any voting law that results in racial discrimination, including literacy tests and poll taxes. The original language in this section mirrored the language of the Fifteenth Amendment.^{4,5} Congress amended this section in 1982, after the 1980 Supreme Court decision in *City of Mobile v. Bolden* that held anyone seeking injunctive relief under Section 2 had to prove the laws were written intentionally with racial bias.⁶ The revised statute takes a more comprehensive approach to determining if voting practices have a discriminatory effect; banning laws that “result” in an unequal “opportunity” to vote “on account of race or color” whether or not discriminatory intent can be proven.⁷ The 1986 Supreme Court case of *Thornburg v. Gingles* laid out a threshold test, that when combined with analyzing historical and social circumstances, results in a more comprehensive approach to determining if a law violates Section 2.⁸

Recent litigation has attempted to push the limits of Section 2 by focusing on neutrally written laws that result in certain minority groups being impacted more than others.⁹ The 2021 U.S. Supreme Court decision in *Brnovich v. Democratic National Committee* addressed this issue by raising the bar for Section 2 federal cases to prove restrictions on minorities from being able to participate in the election process. Since Arizona provides vote-by-mail and month-long early voting, it was difficult to prove a discriminatory effect.¹⁰

Section 3. This section established federal court oversight to prevent “the erection of new and onerous discriminatory voting barriers”¹¹ in jurisdictions not covered by Section 5. Courts have the authority under Section 3 to enforce state and local government compliance with the Fourteenth and Fifteenth Amendments and can appoint federal observers to monitor election practices. The court can also require preclearance procedures similar to those in Section 5.¹²

Section 4. Section 4 establishes the coverage formula that determines which states and local governments are subject to additional Department of Justice (DOJ) oversight under Section 5. This section also authorizes the U.S. Attorney General to send federal observers to these jurisdictions.

In *Shelby County v. Holder*, the Supreme Court held the coverage formula in Section 4(3) to be unconstitutional. Chief Justice John Roberts, writing for the majority, stated:

“History did not end in 1965 ... yet the coverage formula that Congress reauthorized in 2006 ... ke[pt] the focus on decades-old data relevant to decades-old problems, rather than current data reflecting current needs.”¹³

Section 5 and “Preclearance.” Section 5 was designed as a temporary provision to effectively freeze election laws in certain states until federal officials could review them for discriminatory purpose or effect.¹⁴ It resulted in forcing nine states to obtain pre-approval, or “preclearance,” from the U.S. Attorney General or the U.S. District Court for the District of Columbia before making any changes to their voting laws.¹⁵ This section was intended to be temporary, but since its initial five-year authorization, it has been extended four times. The most recent extension was approved in 2006 and set for 25 years.

In 2009, Chief Justice Roberts wrote for the majority in *Northwest Austin Municipal Utility District Number One v. Holder*, stating:¹⁶

The historic accomplishments of the Voting Rights Act are undeniable... Things have changed in the South. Voter turnout and registration rates now approach parity. Blatantly discriminatory evasions of federal decrees are rare. And minority candidates hold office at unprecedented levels... The statute’s coverage formula is based on data that is now more than 35 years old and there is considerable evidence that it fails to account for current political conditions.

DOJ has continued to veto state-level decisions. Reports have emerged in recent years that suggest biased enforcement by politically motivated bureaucrats, including:

- A 2013 report from the DOJ’s Inspector General documents how the Department passed on hiring nonpartisan qualified attorneys and instead hired the majority of lawyers from five progressive organizations: the ACLU, the National Council of La Raza, the NAACP, the Lawyers’ Committee for Civil Rights Under Law, and the Mexican American Legal Defense and Education Fund.¹⁷
- DOJ rejected the annexation of two white residents into the small town of North, South Carolina, over concerns that they would dilute the African American share of the vote.¹⁸
- Predominantly Black Kinston, North Carolina, was not permitted to switch to nonpartisan elections for City Council. DOJ bureaucrats claimed it would be discriminatory to do so, on the basis Black voters would not know who to vote for if “Democrat” was not listed next to a candidate’s name.¹⁹

In *Shelby County v. Holder*, the Court did not rule on the constitutionality of Section 5 itself. However, without the Section 4 formula, jurisdictions covered under Section 5 are effectively no longer subject to federal oversight.

Other major sections:

- Section 8 authorizes the Attorney General to assign federal observers to monitor voting and vote tabulations.
- Section 11(b) prohibits intimidation, threats, or coercion toward voters or anyone aiding voters. This section demonstrates how the VRA is a colorblind statute and includes protections for all voters, not just minorities.²⁰
- Requirements to provide voting notices, forms and other materials in minority languages is addressed in Section 203 and Section 4(3).

¹ William H. Frey, *Minority Turnout Determined the 2012 Election*, Brookings Institution, May 10, 2013, <https://www.brookings.edu/research/minority-turnout-determined-the-2012-election/>

² Scott Clement & Daniela Santamarina, *What we know about the high, broad turnout in the 2020 election*, Washington Post, May 13, 2021, <https://www.washingtonpost.com/politics/2021/05/13/what-we-know-about-high-broad-turnout-2020-election/>

³ *Record High Turnout in 2020 General Election*, U.S. Census Bureau, Apr. 29, 2021, found at <https://www.census.gov/library/stories/2021/04/record-high-turnout-in-2020-general-election.html>

⁴ The Fifteenth Amendment states that the “right of citizens of the United States to vote shall not be denied or abridged ... on account of race, color, or previous condition of servitude.” U.S. Const. amend. XV.

⁵ 52 U.S.C. §10301 (1965).

⁶ *City of Mobile v. Bolden*, 446 U.S. 55 (1980).

⁷ 52 U.S.C. §10301(a) (1965).

⁸ *Thornburg v. Gingles*, 478 U.S. 30 (1986).

⁹ Brief of Senator Ted Cruz and Ten Other Members of the United States Senate as Amici Curiae in Support of the Petitioners, *Brnovich v. Democratic National Committee*, 594 US __ (2021).

¹⁰ *Brnovich v. Democratic National Committee*, 594 US __ (2021).

¹¹ H.R. Report No. 89–439 at 23 (1965).

¹² Olds, E. K., *More than “rarely-used”: A post-Shelby judicial standard for Section 3 preclearance*, Columbia Law Review, 117, No. 8. (2017).

¹³ *Shelby County v. Holder*, 570 U.S. 529 (2013).

¹⁴ 52 U.S.C. § 10304 (2012).

¹⁵ Section 5 most recently applied to Texas, South Carolina, Arizona, Georgia, Louisiana, Mississippi, Alabama, Virginia, and Alaska. It also applies to parts of Florida, California, New York, North Carolina, South Dakota, Michigan, and New Hampshire.

¹⁶ *Northwest Austin Municipal Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009).

¹⁷ Office of the Inspector General, *A Review of the Operations of the Voting Section of the Civil Rights Division*, U.S. Department of Justice (2013), found at <https://oig.justice.gov/reports/2013/s1303.pdf>.

¹⁸ Letter from R. Alexander Acosta, Assistant Attorney Gen., Civil Rights Div., to H. Bruce Buckheister, Mayor of North, S.C. (Sept. 16, 2003). <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/SC-2170.pdf>

¹⁹ Office of the Inspector General, U.S. Department of Justice (2013), *supra* at 17.

²⁰ “Cases Raising Claims Under Section 11(b) of the Voting Rights Act,” U.S. Department of Justice, September 9, 2019. <https://www.justice.gov/crt/cases-raising-claims-under-section-11b-voting-rights-act>.



VOTER REGISTRATION LIST INTEGRITY

Ensuring voter registration lists are accurate is one of the foundational first steps to protecting the integrity of America's electoral system. The 2020 general election had a record-breaking 228 million registered voters.¹ This magnifies the need to properly maintain voter registration lists, since more registered voters increase the possibility for lists to include duplicate registrations, deceased voters, and other ineligible registrants. The impact of poorly managed voter rolls is compounded as more states adopt policies to automatically mail vote-by-mail ballot applications and actual ballots to their full registration lists.

BACKGROUND

Although the U.S. Constitution² gives states the responsibility of overseeing federal elections—including registration—two federal laws, the National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act of 2002 (HAVA), established minimum standards states must follow to maintain voter rolls.

National Voter Registration Act of 1993³

- Commonly called the Motor Voter Act.
- Requires states to offer voter registration at state agencies, such as their department of motor vehicles (DMV), public assistance, and disability offices.
- Specifies that states must offer mail-in applications.
- Addresses cleaning voter rolls and restricts states from removing a registrant solely because they fail to vote.
- Stipulates states must make reasonable efforts to remove deceased voters from their registration lists, but does not specify the procedures.
- Establishes processes to remove voters based on change of residency.
- Imposes a cut-off date for general list maintenance of 90 days prior to the date of a federal primary or general election.

Help America Vote Act of 2002⁴

- Requires states to maintain a statewide voter registration list, either by adopting a single statewide platform that local jurisdictions can access or by gathering and aggregating local voter-registration databases.
- Directs states to coordinate their registration lists with state agency records on felony status and deaths, along with sharing certain data with the state's DMV.
- Instructs states to have a voter-registration applicant provide a driver's license number, the last four digits of his or her Social Security number, or a state-assigned ID number.
- Clarifies some of the maintenance provisions in NVRA, namely laying out a process by which states may remove registrants if they don't respond to an address confirmation mailer and fail to vote in the two following federal elections.

Impact of Poor Maintenance

The importance of clean voter rolls is magnified as more states adopt policies to automatically mail every registered voter a vote-by-mail application or the actual ballot. Eleven states adopted emergency COVID-19 procedures⁵ to

either directly mail or authorize counties to mail vote-by-mail ballot applications to every registered voter. A total of nine states and the District of Columbia automatically mailed ballots.⁶ Several states made those temporary COVID-era policies permanent, for a total of eight states and the District of Columbia⁷ to continue automatically mailing ballots.

Even though federal law requires states to make a “reasonable effort” to maintain accurate voter rolls, many ignore the requirements or do the bare minimum of maintenance. Some examples of poorly maintained registration lists include:

- A “system error” was cited by election officials as the reason why 83 ballots for the 2016 general election were sent to a single apartment address in San Pedro, California.⁸
- In 2019, California settled a federal lawsuit with Judicial Watch and began the process of removing 1.6 million inactive names from the Los Angeles County voter rolls.⁹
- The nonpartisan Wisconsin Legislative Audit Bureau identified that between 2016 and 2020 the Wisconsin Election Commission never compared voter rolls against a national database that tracks deaths and registrations in other states.¹⁰
- A September 2020 Judicial Watch study¹¹ found that Michigan’s voter registration rate was 105% of eligible voting-age citizens and 16 counties had registration rates at or about 110%.
- Pew Center on the States’ Election Initiatives research in 2012 concluded that one of every eight voter registrations in the United States is no longer valid or has significant inaccuracies.¹²

Enforcement is mainly reliant upon the U.S. Department of Justice (DOJ) through monitoring compliance, conducting investigations, and litigating in federal court. Private parties can also challenge maintenance issues in federal court.¹³ Unfortunately, DOJ rarely addresses these types of issues, with most of their litigation driven by progressive staff focused on challenging state voter registration clean-up efforts and addressing lack of access to registration.¹⁴

Voter Roll Maintenance Best Practices^{15, 16, 17}

Americans are a highly mobile society, with approximately 23 million American adults changing residences in 2020.¹⁸ Therefore, the task of keeping voter rolls accurate and up to date is an ongoing effort that requires adhering to comprehensive data management best practices. The NVRA was developed in a paper-based world, so although the Act could be modernized to reflect new technology, many states have moved beyond those minimum standards and use automation and a wide variety of data sources to regularly update voter rolls. Best practices include:

- **Database interoperability** - Designing statewide voter registration lists to be interoperable with other state databases, such as the DMV, so election officials can be notified when a registered voter changes his or her address at the DMV.
- **Multiple sources of data** - Requiring the use of multiple sources of state data on a frequent basis, such as tax records, corrections departments, returned jury notifications, and public assistance agencies.
- **Residential verification** - States can use county tax records to ensure an address in the voter rolls is a residential property, and to flag multiple registrations going to the same address for additional investigation.
- **Interstate data-sharing** - Additional multistate data should be used to track individuals who move outside a jurisdiction or die. Examples include the U.S. Postal Service’s National Change of Address system, Social Security Death index, Social Security Administration’s Master Death File, and commercial data companies such as credit agencies.
- **Cooperative agreements** – States can enter agreements with other states to compare voter lists.
- **List transparency** – Since many voter roll anomalies have been identified by independent research organizations, rather than mainly relying on the Department of Justice to enforce NVRA list-maintenance requirements,¹⁹ voter registration lists should be accessible to the public with confidential information redacted.
- **Adherence to state law** – For states that have local voter-registration databases, additional oversight of local clerks to adhere to maintenance processes may be justified.

¹ https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf#page10

² Jacob Schallus, The Constitution of the United States: A Transcription. National Archives. May 4, 2020. <https://www.archives.gov/founding-docs/constitution-transcript>

³ <https://www.congress.gov/bill/103rd-congress/house-bill/2>

⁴ <https://www.congress.gov/bill/107th-congress/house-bill/3295>

⁵ <https://ballotpedia.org/>

Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020

⁶ <https://ballotpedia.org/>

Changes_to_election_dates,_procedures,_and_administration_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020

⁷ https://ballotpedia.org/All-mail_voting

⁸ <https://www.nbclosangeles.com/news/politics/more-than-80-ballots-sent-to-san-pedro-apartment/106443/>

⁹ <https://www.judicialwatch.org/california-begins-massive-voter-roll-clean-up-notifies-up-to-1-5-million-inactive-voters-as-part-of-judicial-watch-lawsuit-settlement/>

¹⁰ <https://legis.wisconsin.gov/lab/media/3288/21-19full.pdf>

¹¹ <https://www.judicialwatch.org/judicial-watch-study/>

¹² <https://www.pewtrusts.org/en/research-and-analysis/reports/2012/02/14/inaccurate-costly-and-inefficient-evidence-that-americas-voter-registration-system-needs-an-upgrade>

¹³ <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>

¹⁴ <https://www.justice.gov/crt/cases-raising-claims-under-national-voter-registration-act#kynvra2018>

¹⁵ <https://www.heritage.org/election-integrity-facts>

¹⁶ <https://bipartisanpolicy.org/report/logical-election-policy/>

¹⁷ <https://youtu.be/qALL3dNKghs>

¹⁸ <https://www.census.gov/newsroom/press-releases/2020/cps-asec-geographic-mobility.html>

¹⁹ <https://www.justice.gov/crt/cases-raising-claims-under-national-voter-registration-act#kynvra2018>



STATE ELECTION REFORMS IN 2021

States are the laboratories of democracy,¹ established to address their citizens' specific and unique needs. State and local election officials are responsible for administering elections for over half a million federal, state, and local races, plus statewide and local ballot measures.² That responsibility extends to implementing election laws that ensure legal residents can register to vote and that votes are correctly counted and secure. Election integrity is particularly important as the country emerges from the COVID-19 pandemic, during which many temporary and experimental voting processes were hastily put in place.

While many states are passing commonsense election integrity reforms, Congressional Democrats in Washington continue to advocate for federalizing elections to unfairly stack the deck in their political favor. Such a federal power grab over election administration would subvert the duties of state legislatures established by Article I, Section 4, Clause 1 of the U.S. Constitution.³

States have always updated their election laws and procedures to address changing needs and utilize new security technology. For example, between the 2000 and 2020 elections, the State of Florida made more than 80 changes to its statutes and regulations governing elections.⁴

The following chart captures election integrity reforms that states have passed in 2021.⁵ Many states continue to work on reforms and several more are expected to be adopted during 2022 legislative sessions.

	Absentee/ Mail-In Voting Security	Early In- Person Voting Reforms	Voter ID and Other Integrity Measures	Limiting Outside Groups Funding Elections	Poll Place, Machine and Drop Box Security	Expand Poll Watcher Access and Increased Transparency	Improving Accuracy of Voter Rolls and Registration	Vote Tabulation and Post- Election Audits	Election Official Integrity
Alabama	*				*	*	*	*	
Arizona	*	*		*	*	*	*		*
Arkansas	*		*	*	*				*
Florida	*				*				
Georgia	*		*	*	*	*		*	*
Idaho	*	*		*				*	*
Indiana	*		*	*					
Iowa	*				*				
Kansas	*			*	*				
Kentucky	*	*	*		*			*	
Louisiana	*	*					*		
Maine	*							*	
Montana			*		*	*	*	*	
Nebraska							*		
New						*	*	*	

	Absentee/ Mail-In Voting Security	Early In- Person Voting Reforms	Voter ID and Other Integrity Measures	Limiting Outside Groups Funding Elections	Poll Place, Machine and Drop Box Security	Expand Poll Watcher Access and Increased Transparency	Improving Accuracy of Voter Rolls and Registration	Vote Tabulation and Post- Election Audits	Election Official Integrity
Hampshire									
North Dakota	*		*	*					
Oklahoma	*						*	*	
South Dakota	*							*	
Tennessee				*					
Texas	*	*		*	*	*	*	*	*
Utah	*						*		
Wisconsin						*			
Wyoming			*						

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¹ *New State Ice Co v. Liebmann*, 286 U.S. 262 (1932).

² David Nir, The Daily Kos, “Just how many elected officials are there in the United States? The answer is mind-blowing,” March 29, 2015. <https://www.dailykos.com/stories/2015/3/29/1372225/-Just-how-many-elected-officials-are-there-in-the-United-States-The-answer-is->.

³ Jacob Schallus. The Constitution of the United States: A Transcription. National Archives. May 4, 2020. <https://www.archives.gov/founding-docs/constitution-transcript>

⁴ The James Madison Institute. (2021) *Restoring Trust and Security in Florida Elections From Bush v. Gore to Covid-19* ⁵ Chart compiled by RPC using data from <https://www.ncsl.org/research/elections-and-campaigns/2021-election-enactments.aspx>, <https://www.wibw.com/2021/05/03/lawmakers-override-governors-vetoes-on-pair-of-elections-law-bills/>, <https://www.courier-journal.com/story/opinion/2021/10/18/bipartisan-election-laws-kentucky-prove-red-state-gripes-biased/6103597001/>, and <https://www.cbsnews.com/news/kentucky-election-reforms-bipartisan/>.



ELECTION INTEGRITY – TRUTH ABOUT FLORIDA

Following the presidential election “hanging chads” debacle of 2000 and other issues in 2018, Florida leaders made significant improvements to election procedures. Changes included simplifying the ballot design, updating equipment, and pre-processing mail ballots to get timely election results.¹ This resulted in an effective and transparent 2020 election with no major problems reported.²

Before the 2021 state legislative session began, Governor Ron DeSantis (R-FL) urged state lawmakers to prioritize legislation that would strengthen election integrity protections, including outlawing ballot harvesting and mass mailing of unsolicited ballots. At a February 2021 press conference he stated, “The result of 2020 from an administrative perspective was that Florida had the most transparent and efficient election anywhere in the country. Other states took days, weeks, and even months to count their votes.”³ But the Sunshine State “can’t rest on (its) laurels.”⁴

On May 6, 2021 Governor DeSantis signed SB 90 into law. The bill improves Florida elections through the following methods:⁵

- **Encouraging voter registration while improving the accuracy of the rolls.**
 - Adds cybersecurity and other protective measures to ensure the online voter-registration system is operational during periods of peak usage and secure against malware and other types of attacks.
 - Extends the deadline for third-party groups running voter-registration drives; they now have 14 days to return completed registrations instead of 48 hours.
 - The last four digits of the voter’s Social Security number, Florida driver’s license number, or Florida identification card number must be submitted with a registration application or when requesting changes to existing registration.
 - The supervisor of elections must update voter-registration records when voters change the residence address on their driver’s license or identification card.
- **Expanding ways voters can return their ballots while preventing ballot harvesting.**
 - Requires a driver license number, identification card number, or last four digits of a Social Security number to request a vote-by-mail ballot.
 - Requires voters to request an absentee ballot for each election instead of automatically mailing ballots, unless voters have a disability or an overseas address.
 - Prohibits mass mailing of ballots.
 - Expands the list of people that can pick up vote-by-mail ballots for an elector to include grandchildren.
 - Standardizes drop box locations so they must be located someplace geographically central that all voters can access, such as early voting sites, and adds safeguards such as in-person monitoring and restricting use to early voting hours.
 - Drop box locations need to be finalized 30 days before an election.
 - Addresses ballot harvesting by making it a misdemeanor for anyone to distribute, order, request, collect, deliver, or possess more than two vote-by-mail ballots but provides an exemption for supervised voting at nursing home facilities.

- **Expanding voting ease and access, standardizing processes, and increasing transparency.**
 - Promotes uniformity of election operations funding between counties by prohibiting outside money from being used to pay for election-related expenses.
 - Prohibits actions “with the intent to influence or effect of influencing a voter” within the already-established 150-foot no-solicitation zone but clarifies that supervisor office employees and volunteers can provide nonpartisan assistance such as distributing water.
 - Counties can begin canvassing returned mail-in ballots as soon as tabulation equipment has been tested, giving counties the option of having more days to process ballots but ensuring they cannot release results until polls close.
 - Ensures party affiliation is not disclosed during signature-match verification process of vote-by-mail ballots.
 - Guarantees access for election observers to monitor the duplication of ballots and expands the ability for candidates and other party officials to inspect ballot materials.
 - Improves access to real-time voter turnout data by requiring each supervisor of election to release voter turnout and vote-by-mail counting data every hour on Election Day and transmit that data to the state supervisor of election for uploading on a state-wide dashboard.
 - Bolsters legal standing of the Florida Legislature in challenges to state election law.

¹ <https://www.sun-sentinel.com/news/politics/elections/fl-ne-how-florida-voting-change-20201101-jd36tjd3q5arlgcodw44dbnisi-story.html> ² https://www.wsj.com/articles/florida-republicans-pitch-state-as-model-for-elections-expanding-gop-appeal-11615136400?st=yccheuzdweq5nfk&reflink=article_copyURL_share

³ <https://www.nbcmiami.com/news/local/gov-desantis-expected-to-make-announcement-in-west-palm-beach/2387075/>

⁴ <https://floridapolitics.com/archives/405105-ron-desantis-blaise-ingoglia-announce-sweeping-election-reform-proposal/>

⁵ <https://www.flsenate.gov/Session/Bill/2021/90/BillText/er/PDF>



ELECTION INTEGRITY – TRUTH ABOUT GEORGIA

Georgia Governor Brian Kemp (R-GA) signed SB202 into law on March 25, 2021.¹ This was the second state in 2021 to pass comprehensive reforms. Democrats’ response to the bill was swift and riddled with inaccuracies. President Joe Biden called the reforms an “atrocious” and ordered the Justice Department to review the bill.²

The *Washington Post* gave Biden “four Pinocchios” for the incorrect statements he made about the new law.³ Biden alleged it reduces voting hours and that polls would close at “five o’ clock when working people are just getting off work.”⁴ Experts claim that the net effect of the bill will actually expand voting hours and adds an additional Saturday to early voting. It also requires that large polling places or precincts that had voters waiting in line more than one hour in the previous general election to either hire more staff, purchase more equipment, or reduce the size of the precinct.⁵

The bill addresses the following issues:⁶

- **Improves the security and accuracy of mail-in ballots.**
 - Changes timeline voters can request a mail-in ballot from 180 days to 11 weeks before an election.
 - To provide enough time to process them accurately, mail-in ballot applications must be returned two Fridays before an election, instead of one Friday.
 - Counties will begin mailing ballots four weeks before the election, streamlining the process by three weeks.
 - Prohibits state and local governments from sending unsolicited applications.
 - Third-party groups can only send mail-in ballot applications to voters who have not requested one and must clearly identify the application as an unofficial publication.
 - Requires absentee ballots to be printed on special paper, and voters must provide an ID number and signature.
- **Requires voters to use ID to ensure election integrity.**
 - Requesting and returning a mail-in ballot requires ID (driver’s license number, state ID or other approved ID) and can be done through a new online system that will be launched by the Secretary of State.
 - In-person voting also requires ID along with name, date of birth, and address, plus voters must sign an oath swearing that information is correct.
- **Expands the ease and access to voting, standardizes processes, and increases transparency.**
 - Early voting will be expanded in most areas. Hours can be 7:00 am to 7:00 pm or 9:00 am to 5:00 pm and adds an additional mandatory Saturday, with Sunday voting hours optional.
 - Prohibits mobile voting.
 - Requires large signage to notify voters of polling place changes or closures.
 - Large polling places with line waits of more than an hour and more than 2,000 voters are required to hire more staff or split up precincts.

- Adds food and water to the list of gifts and campaign material that cannot be handed out to voters in line but allows unmanned water stations to be set up and groups to hand out water if they remain outside the specified buffer area.
 - Improves daily reporting of absentee ballots received and early voting.
 - Provides county officials with more flexibility to choose equipment for smaller, lower turnout races.
 - Promotes uniformity of election operations funding between counties by prohibiting outside money from being used to administer elections.
 - Georgia's run-off period shortened to four weeks instead of nine weeks.
 - In case there is a run-off, military and overseas voters will be mailed an instant ranked choice run-off ballot with their regular ballot.
- **Prevents ballot harvesting.**
 - Legalizes absentee ballot drop boxes
 - Requires drop boxes to be located inside voting sites and capped at one per 100,000 active voters.
 - **Improves vote processing accuracy and timeliness.**
 - Officials can begin processing absentee ballots (not counting) two weeks before the election.
 - Counties must finish tabulating all the votes by 5:00 pm the day after election.
 - **Provides more oversight of election officials to ensure adherence to the law.**
 - Removes the Secretary of State as the chair of the State Election Board.
 - Expands oversight of local election officials.
 - Prohibits the Board and staff from entering into any settlement agreements without notifying lawmakers first.

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¹ <https://legiscan.com/GA/bill/SB202/2021>

² <https://www.nytimes.com/live/2021/03/26/us/biden-news-today>

³ <https://www.washingtonpost.com/politics/2021/03/30/biden-falsely-claims-new-georgia-law-ends-voting-hours-early/>

⁴ *Id.*

⁵ *Id.*

⁶ <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do>



ELECTION INTEGRITY— TRUTH ABOUT IOWA

Article I, Section 4, Clause 1 of the U.S. Constitution empowers both Congress and state legislatures to regulate the “times, places and manner of holding elections for Senators and Representatives.”¹ Local and state election officials are responsible for administering elections for over half a million federal, state and local races, plus statewide and local ballot measures.² Because of this complexity, state legislatures should handle election laws so they can address the unique needs of the state while ensuring the security and integrity of the election process.

Due to COVID, many states adopted temporary changes to absentee and mail-in voting procedures.³ These emergency procedures, coupled with record turnout, exposed problems in state election processes that need to be addressed. On March 8, 2021 Governor Kim Reynolds (R-IA) signed Senate File (SF) 413, the first comprehensive election reform bill of 2021. SF 413 improves voter list maintenance, secures absentee ballots and standardizes election administration across the state.⁴ Highlights of the reform include:⁵

- **Improves the accuracy of voter registration rolls.**
 - The bill requires the state registrar to cross-reference voting lists in other states and use U.S. Postal Service change-of-address data.
 - The status of voters who do not vote in a general election is changed to “inactive.” They must miss two more general elections after being deemed “inactive” to have their registration canceled.
 - *Iowa permits same-day voter registration. Eligible voters that have been removed from registration rolls due to a long period of inactivity can still reregister to vote on a future election day.*
- **Increases the security of absentee ballots.**
 - Prohibits absentee ballot applications and ballots from being prefilled and automatically mailed to voters who have not requested them.
 - Changes the date absentee ballot requests can be processed from 120 to 70 days prior to the election.
 - Changes the date ballots can begin to be mailed out from 29 to 20 days before the election.
 - Requires legislative approval to automatically send out applications during a public health emergency.
 - Requires that mail-in ballots arrive by the time polls close to be counted.
 - Improves reporting on absentee ballot requests and completed ballot submissions.
- **Expands ways voters can return their ballots while preventing ballot harvesting.**
 - Legalizes ballot drop boxes by adding them to the law governing how absentee ballots can be returned.
 - Mandates that ballot drop boxes be located within a commission office or on adjacent property.
 - Requires video surveillance of drop boxes and additional security measures.
 - States that absentee ballots must be signed; if not, voters are given an opportunity to use a replacement ballot or vote in person no later than the time polls close on Election Day.
 - Mandates that only the voter, an individual living in the voter’s home, immediate family, or a caretaker may return a ballot.

- **Standardizes how elections are administered across the state while improving transparency and accountability.**
 - Requires that voters be directly notified when a change is made to their precinct polling place.
 - Gives the attorney general and county attorneys greater oversight to investigate election misconduct.
 - States that county election officials who violate election laws can be fined up to \$10,000.
 - Prohibits officials from interfering with election observers. Those who violate this will be guilty of election misconduct in the third degree.
 - Sets standardized procedures for establishing satellite voting stations by petition.
 - Limits in-person early voting to start 20 days, instead of 29 days, before the election.
 - Changes the poll closure time from 9:00 pm to 8:00 pm, which is the same or later than 48 other states.⁶
 - Requires private employers whose employees' schedules do not permit them to vote must provide two, rather than three hours, of paid time to participate in the election.

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¹ <https://www.archives.gov/founding-docs/constitution-transcript>

² <https://www.dailykos.com/stories/2015/3/29/1372225/-Just-how-many-elected-officials-are-there-in-the-United-States-The-answer-is-mind-blowing>

³ [https://ballotpedia.org/Changes_to_absentee/mail-in_voting_procedures_in_response_to_the_coronavirus_\(COVID-19\)_pandemic,_2020](https://ballotpedia.org/Changes_to_absentee/mail-in_voting_procedures_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020)

⁴ State of Iowa, Office of the Governor, Kim Reynolds, Senate File 413 (Mar. 8, 2021), available at <https://www.legis.iowa.gov/legislation/BillBook?ba=SF413&ga=89>

⁵ *Id.*

⁶ [https://ballotpedia.org/State_Poll_Opening_and_Closing_Times_\(2021\)](https://ballotpedia.org/State_Poll_Opening_and_Closing_Times_(2021))



ELECTION INTEGRITY – THE TRUTH ABOUT TEXAS

“Suppose an Article had been introduced into the Constitution, empowering the United States to regulate the elections of the particular States, would any man have hesitated to condemn it, both as an unwarrantable transposition of power, and as a premeditated engine for the destruction of the State Governments?”

– Alexander Hamilton, Federalist No. 59

Following the 2020 elections, Texas and other states passed reforms to restore public trust in the integrity of our election systems. Democrats nationwide have been advocating to federalize elections, in an attempt to seize power by subverting the duties of state legislatures established by Article I, Section 4, Clause 1 of the U.S. Constitution.¹

Texas Democrats attempted to stall commonsense reforms toward the end of the 87th Texas Legislature, Regular Session by walking off the floor and denying votes on several key pieces of legislation, including the election integrity package.² In an unprecedented final stunt, during Texas’ first special session, they fled to Washington, D.C. on a private plane to deny a quorum required for a vote. Remaining in Washington, COVID-exposed Democrats called on Congress to intervene – and boost their political interests – by passing H.R. 1, which would impose a federal power grab over their state’s elections.³

Three Democrats testified at the July 29, 2021 House Committee on Oversight and Reform’s Subcommittee on Civil Rights and Civil Liberties hearing on the Texas bill. Congresswoman Nancy Mace (R-SC1) questioned Texas Representative Senfronia Thompson about ID laws in Texas. She admitted they needed to show ID to board their private plane to Washington.⁴

After 38 days of blocking a quorum, enough legislators returned home to hold the vote.⁵ Texas Governor Greg Abbott signed SB 1, the Election Integrity Protection Act, into law on September 7, 2021.⁶

Texas’ law includes the following reforms:⁷

- **Standardizes election procedures across counties and provides more opportunities to vote early.**
 - Extends early voting hours and mandates that workplaces permit employees to make a trip to vote either during early voting or on Election Day.
 - Standardizes hours that counties can offer early voting, requiring polls to be open a minimum of nine hours no earlier than 6:00 a.m. and no later than 10:00 p.m.
 - Rolls back COVID practices, such as drive-thru voting, that are irrelevant post-pandemic, unless a voter is physically unable to enter a polling place.
 - Adds criminal penalties for election officials and others that violate election state laws.
- **Improves the integrity of mail-in ballots.**
 - Prohibits officials from mailing out unsolicited applications and ballots.

- Adds an ID requirement for mail-in voting. Voters have a choice to include their driver's license number, election identification certificate, or the last four digits of their Social Security number.
 - Approximately 72% of registered Democrats support Voter ID.⁸
 - Requires voters to sign their mail-in ballots to be verified with a previously filed signature.
 - Creates a process for voters that submit ballots with issues to be notified and given an opportunity to correct the problem.
- **Curbs ballot harvesting and illegal voting.**
 - Protects vulnerable voters by requiring individuals helping them to take an oath that defines how they can assist a voter, including a statement that they did not “pressure or coerce” the voter.
 - Individuals that help a voter complete their ballot will need to disclose their information, relationship to the voter, and if they were paid by a campaign or political committee.
 - Mail-in ballots must be received by an election official, rather than an unmanned drop box.
 - Requires the Texas Secretary of State's office to run its voter registration list against the Department of Public Safety database to remove non-citizens.
 - **Increases transparency of the election process and protects poll watchers.**
 - Ensures poll watchers have “free movement” around the voting facilities and can “sit or stand” close enough to see or hear all election activities, other than voters casting ballots.
 - If movement is restricted there is a legal avenue for poll watchers to seek a court order against the election official restricting access.
 - Classifies a Class A misdemeanor if an election official rejects an appointed poll watcher.
 - Counties with more than 100,000 people must record and livestream ballot counting.
 - Poll workers must complete training before they begin their duties and swear an oath they will not harass voters.
 - In order to track potential fraud, all cases of improperly cast ballots must be referred to the state attorney general.

The Texas legislature also passed HB 2283, which addresses private dollars funding election administration. The bill caps private donations at \$1,000. If an individual seeks to donate more, they need written consent from the Secretary of State, joint election commission, county election commission, and county election board.⁹

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¹ Jacob Schallus. The Constitution of the United States: A Transcription. National Archives. May 4, 2020. <https://www.archives.gov/founding-docs/constitution-transcript>

² Alexa Ura. Texas Democrats abandon House floor, blocking passage of voting bill before final deadline. The Texas Tribune. May 30, 2021. <https://www.texastribune.org/2021/05/30/texas-voting-restrictions-house/>

³ Lauren McGaughy, Gromer Jeffers Jr., and Allie Morris. ‘Fight of our lives.’ Texas Democrats leave the state to block debate on elections bill. The Dallas Morning News. July 12, 2021. ‘Fight of our lives.’ Texas Democrats leave the state to block debate on elections bill (dallasnews.com) ; Paul J. Weber. ‘Leave the building’: Texas walkout escalates voting battles. CHRON. May 31, 2021. <https://www.chron.com/politics/article/Texas-Voting-Bill-Battle-Walk-Out-16215347.php> and Marc Siegel. What can we learn from the Texas Democrats who spread COVID in Washington? The Dallas Morning News. July 25, 2021. What can we learn from the Texas Democrats who spread COVID in Washington? (dallasnews.com)

⁴ Civil Rights and Civil Liberties. Democracy in Danger: The Assault on Voting Rights in Texas. House Committee on Oversight and Reform. July 29, 2021. <https://oversight.house.gov/legislation/hearings/democracy-in-danger-the-assault-on-voting-rights-in-texas>

⁵ Paul J. Weber and Acacia Coronado. Texas Democrats Return, End 38-Day Holdout Over Voting Bill. World Report U.S. News. August 19, 2021. <https://www.usnews.com/news/politics/articles/2021-08-19/texas-democrats-return-end-38-day-holdout-over-voting-bill>

⁶ Bret Jaspers. Gov. Greg Abbott Signs Controversial Voting Bill into Law. Kera News. September 7, 2021. <https://www.keranews.org/politics/2021-09-07/gov-greg-abbott-signs-controversial-voting-bill-into-law>

⁷ Hughes. SB 1. Texas Legislature Online. <https://capitol.texas.gov/BillLookup/Text.aspx?LegSess=872&Bill=SB1>

⁸ Texans Overwhelmingly Support Voter ID, Protections for Mail-In Ballots: A majority of Texans oppose the federal “For the People” Act. Texas Public Policy Foundation. July 26, 2021. <https://www.texaspolicy.com/press/texans-overwhelmingly-support-voter-id-protections-for-mail-in-ballots-a-majority-of-texans-oppose-the-federal-for-the-people-act>

⁹ Phil King, Paul, Cain, Patterson, and Schofield. HB 2283. Texas Legislature Online. June 18, 2021. <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB2283>



A FAILING GRADE FOR REMOTE LEARNING

When the COVID-19 pandemic began spreading across the U.S., many schools made the tough decision to temporarily close and shift to virtual classes. By April 17, 2020, 43 states and Washington D.C. had required schools to close, and seven states recommended it.¹ Many schools also remained closed for the majority or entirety of the 2020-2021 school year. In December 2020, 56% of school districts were still fully remote.² By May 2021, only 2% of school districts were fully remote.³ Education is a vital part of a child's development and essential to preserving a free society, and so the losses resulting from the school closures and remote learning are devastating.

- **Loss of learning in reading and math.**

- Many students failed to gain proper understanding in reading and math during remote school. By comparing the reading and math scores from 2021 to 2019, the Texas Education Agency found that remote teaching resulted in a loss of learning. In reading, 34% of students grades 3 through 8 met their grade-level's expectations compared with 39% in 2019. In math, only 28% of students grades 3 through 8 met their grade-level's expectations compared with 40% in 2019. Similarly, high school students' Algebra I test scores show only 41% met expectations compared to 62% in 2019.⁴ It is evident that school closures hurt, but the student scores were not excellent to begin. School closures made a bad situation worse.
- A Gallup survey in Massachusetts found that 41% of high-school students who are in person, full-time "strongly agree that they learn a lot every day," while only 16% of students in full-time remote school said so. Also, 8% of in-person students said they were falling behind, while one third of fully remote or hybrid students said they were.⁵ Full-time remote students missed out on the best opportunity to learn.
- NWEA's, formerly the Northwest Evaluation Association, survey of 4.4 million students found that in grades 3-8, grades fell an average of 5-10% in math from fall 2019 to fall 2020.⁶ Students consistently lost math skills while attempting to learn while fully-time remote.

- **Loss of attendance.**

- In addition to performing poorly on tests, many students failed to attend virtual school altogether. For example, Los Angeles Unified School Districts reported that an average of 32% of high-school students did not log into virtual classes each day.⁷ The superintendent is concerned that some of these students are those who are in foster care or living in poverty.⁸
- In fall 2020, at Provide Public Schools in Rhode Island, students who were fully remote attended class less often and received lower grades for incomplete classwork than students who attended in-person classes.⁹ Also, a study of 33 California school districts showed that the chronic absence rate doubled to 16% in sixth grade and 21% in seventh grade.¹⁰

- **Loss of support for low-income and high-need students.**

- From reduced school services to limited access to electronics and broadband, students who live in poverty face the greatest disadvantages from remote instruction. The lack of school opportunity during pandemic harms students, especially in low-income Black and Hispanic communities where they rely on education for opportunities to build a future out of poverty.¹¹ Further still, students who depend on

mental health care at school, come from food insecure households, or live at risk of abuse or neglect at home faced additional challenges during school closures.¹²

- Students who were already behind in their classes now face more difficulties catching up. For example, in fall 2019, 47% of at-risk D.C. students were more than 2 grades behind in math, and the amount increased to 55% in 2020.¹³ Experts are united in announcing that students will struggle to progress without in-person instruction.¹⁴
- **Loss of opportunity for mental and emotional growth.**
 - School provides more than just instruction—it offers opportunities for social, physical, and behavioral activities. Virtual instruction fails to offer these activities that support mental and emotional growth and health.¹⁵ A 2020 Centers for Disease Control and Prevention (CDC) study shows that virtual instruction poses more risks to mental health and wellness of children than in-person school.¹⁶
 - Some educators are most concerned about the impacts of school closures on kindergarteners because social and emotional learning is especially important at this age. Kindergarten is where students “learn the building blocks of how to be students.”¹⁷ Keeping them at home impedes these key developments.
- **Loss of healthy minds and bodies.**
 - During school closures and social isolation, eating disorders increased among students. For example, the number of eating disorder patients at Boston Children’s Hospital tripled and requests for eating-disorder treatment has increased from 6 cases per week to 23 cases.¹⁸ Dr. Tracy Richmond called the mental-health problems of adolescents “like a second pandemic.”¹⁹
 - In May 2020, just after school closures began, 29 percent of parents with school age children said their child’s mental and emotional health was worse than before the pandemic, and by October 2020, it rose to 31 percent of parents.²⁰ These parents often cited that it was a major challenge to be separated from classmates and teachers during school closures.²¹
 - Young girls have been particularly vulnerable to lost resources and opportunities at school. Emergency room visits for potential suicide attempts for girls ages 12 to 17 increased 50 percent from February to March in 2021 compared to 2019.²²

School closures and remote learning have received a resounding F. Department of Education Secretary Miguel Cardona said he expects school to open for full time, in-person instruction this fall.²³ Also, the American Academy of Pediatrics (AAP) reports, “Opening school generally does not significantly increase community transmission,” especially when appropriate health safety measures are followed.²⁴ AAP encourages schools do “everything possible” to keep students in-person for school.²⁵

For the sake of students’ mental and emotional well-being, schools should work to open for fully in-person instruction for the duration of the 2021-2022 school year. If schools don’t, the consequences will negatively affect a generation of students for a lifetime.

- ¹ Hoffman, Jessica and Miller, Edward. “Addressing the Consequence of School Closure Due to COVID-19 on Children’s Physical and Mental Well-Being.” World Medical and Health Policy. August 20,2020. <https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.365>
- ² Koh, Yoree. “Fewer Children Are Attending School, Remotely and In Person.” *Wall Street Journal*. February 5, 2021. <https://www.wsj.com/articles/fewer-children-are-attending-school-remotely-and-in-person-11612521003>
- ³ Malkus, Nat. “Nearly all school districts finally offer some in-person instruction: We should not be satisfied.” The Hill. <https://thehill.com/opinion/education/553798-nearly-all-school-districts-finally-offer-some-in-person-instruction-we>
- ⁴ Malkus, Nat. “Texas provides an early, ominous look at pandemic learning loss.” Return 2 Learn Tracker. June 30, 2021. <https://www.returntolearntracker.net/2021/06/30/texas-provides-an-early-ominous-look-at-pandemic-learning-loss/>
- ⁵ Koh, Yoree. “Fewer Children Are Attending School, Remotely and In Person.” *Wall Street Journal*. February 5, 2021. <https://www.wsj.com/articles/fewer-children-are-attending-school-remotely-and-in-person-11612521003>
- ⁶ Einhorn, Erin. “When COVID-19 closed schools, Black, Hispanic and poor kids took biggest hit in math, reading.” NBC News. December 1, 2020. <https://www.nbcnews.com/news/education/when-covid-19-closed-schools-black-hispanic-poor-kids-took-n1249352>
- ⁷ Hobbs, Tawnell and Hawkins, Lee. “The Results are in for Remote Learning: It Didn’t Work.” *Wall Street Journal*. June 5, 2020. <https://www.wsj.com/articles/schools-coronavirus-remote-learning-lockdown-tech-11591375078>
- ⁸ Id.
- ⁹ Koh, Yoree. “Fewer Children Are Attending School, Remotely and In Person.” *Wall Street Journal*. February 5, 2021. <https://www.wsj.com/articles/fewer-children-are-attending-school-remotely-and-in-person-11612521003>
- ¹⁰ Id.
- ¹¹ Ewing, John. “The Ridiculousness of Learning Loss.” *Forbes*. December 28, 2020. <https://www.forbes.com/sites/johnewing/2021/12/28/the-ridiculousness-of-learning-loss/?sh=462af0f57c32> and Dorn, Emma, Hancock, Bryan, Sarakatsannis, Jimmy, and Viruleg, Ellen. “COVID-19 and learning loss--disparities grow and students need help.” McKinsey&Company. December 8, 2020. <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help>
- ¹² Hoffman, Jessica and Miller, Edward. “Addressing the Consequence of School Closure Due to COVID-19 on Children’s Physical and Mental Well-Being.” World Medical and Health Policy. August 20,2020. <https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.365>
- ¹³ Stein, Perry. “D.C. students are falling behind in remote school, with vulnerable students faring worse, data suggests.” *Washington Post*. December 17, 2020. https://www.washingtonpost.com/local/education/dc-students-learning-loss-pandemic/2020/12/17/090755ec-4062-11eb-8db8-395dedaaa036_story.html
- ¹⁴ Dorn, Emma, Hancock, Bryan, Sarakatsannis, Jimmy, and Viruleg, Ellen. “COVID-19 and learning loss--disparities grow and students need help.” McKinsey&Company. December 8, 2020. <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help>
- ¹⁵ “Association of Children’s Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID-19 Pandemic—COVID Experiences Survey, U.S., October 8–November 13, 2020.” Centers for Disease Control and Prevention. March 19, 2021. https://www.cdc.gov/mmwr/volumes/70/wr/mm7011a1.htm?s_cid=mm7011a1_w
- ¹⁶ Wood, Ada and Mascarenhas, Lauren. “Virtual school can be damaging to children’s mental health, CDC study says.” CNN Health. <https://www.cnn.com/2021/03/26/health/cdc-remote-learning-kids-mental-health-wellness/index.html>
- ¹⁷ Bauerlein, Valerie. “Remote kindergarten During COVID-19 Could Impact This Generation of Kids for Their Lifetime.” *Wall Street Journal*. May 9, 2021. <https://www.wsj.com/articles/remote-kindergarten-during-covid-19-could-impact-this-generation-of-kids-for-their-lifetime-11620552653>
- ¹⁸ Reddy, Sumathi. “Eating Disorder Surge Among Adolescents in Pandemic.” *Wall Street Journal*. June 21,2021. <https://www.wsj.com/articles/eating-disorders-surged-among-adolescents-in-pandemic-11624302000>
- ¹⁹ Id.
- ²⁰ Panchal, Nirmita; Kamal, Rabah; et. al. “Mental Health and Substance Use Considerations Among Children During the COVID-19 Pandemic.” Kaiser Family Foundation. May 26, 2021. <https://www.kff.org/coronavirus-covid-19/issue-brief/mental-health-and-substance-use-considerations-among-children-during-the-covid-19-pandemic/>
- ²¹ Calderon, Valerie. “U.S. Parents Say COVID-19 Harming Child’s Mental Health.” Gallup. June 16, 2020. <https://news.gallup.com/poll/312605/parents-say-covid-harming-child-mental-health.aspx>
- ²² Yard, Ellen, PhD and others. “Emergency Department Visits for Suspected Suicide Attempts Among Persons Age 12-25 Years Before and During COVID-19 Pandemic.” Centers for Disease Control and Prevention. June 18, 2021. https://www.cdc.gov/mmwr/volumes/70/wr/mm7024e1.htm?s_cid=mm7024e1_w
- ²³ Camera, Lauren. “Cardona Says He Expects All School Will Open This Fall.” U.S. News. May 3, 2021. <https://www.usnews.com/news/education-news/articles/2021-05-03/cardona-says-he-expects-all-schools-will-open-this-fall>
- ²⁴ “COVID Guidance for Safe Schools.” American Academy of Pediatrics. <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/>
- ²⁵ Id.



AN ASSAULT ON WOMEN AND GIRLS IN SPORTS

Biological boys, identifying as transgender, are replacing girls in the winner's circle at female sporting events. This is not only unfair competition; in some sports it is dangerous.

- **There are biological differences between men and women, and so separating men's and women's sports creates a level playing field.**
 - Differences between men and women are recognized at "biochemical and cellular levels."¹
 - Males have circulating testosterone concentrations 15- to 20-fold greater than children or women at any age, resulting in greater muscle mass, strength, and hemoglobin levels. These differences impact athletic performance.²
 - Endocrinologist Dr. Ramona Krutzik explains that "women just do not have the ability to produce the same muscle mass that men do." Muscle mass established in the "body's developmental years" simply "cannot be undone."³
 - Title IX of the Education Amendments of 1972 was enacted to ensure both men and women are given opportunity to participate in sports. Title IX requires schools to provide opportunities for both women's and men's sports.⁴ When considering the bodily differences between males and females, this is how we are able to give them a fair chance in sports.⁵
- Democrats and the Biden Administration conveniently ignore proven science and insist on stripping women of their rights to equitable competition. On January 20, President Biden signed an executive order (EO) requiring women's sports, bathrooms, and locker rooms to accept biological men, under the guise of non-discrimination.⁶
- **Allowing biological men to compete with women hurts the very athletes it claims to help.**
 - President Biden's EO effectively ends privacy, fairness, and competition for women and girls in the name of equality.⁷
 - Connecticut high school track athletes Chelsea Mitchell, Alanna Smith, and Selina Soule, for example, used to win state championships. The Connecticut Interscholastic Athletic Conference allows biological males identifying as girls to compete with biological girls. As a result, Chelsea, Alanna, and Selina have each lost various high school championships to biological males.⁸
 - Martina Navratilova, an American tennis champion who identifies as part of the LGBTQ community, has requested a separate provision to be made for elite women's sports following Biden's executive order. She claims the physical advantages for transgender women athletes are clearly not a level playing field.⁹
 - Also, women are at greater risk for physical injury when forced to compete against biological men. World Rugby recently instituted a rule prohibiting transgender men from participating in women's rugby after finding that the risk of injury is at least 20-30 percent higher when women compete against males that have gone through puberty.¹⁰
- **Congress should support fair competition and participation for female athletes.**

- There are other ways to accommodate athletes suffering from gender dysphoria. However, President Biden's EO forces all students to embrace an extremist understanding of gender while silencing all disagreement and alternatives.¹¹
- Misleading children and students on the basics of biology for political gain is cruel. Congress should oppose Biden Administration efforts to promote false assumptions about biology, or women and children are destined to pay the price. H.R. 426, the Protection of Women and Girls in Sports Act of 2021, would ensure fair competition by prohibiting federal funds from being used for athletic activities in which post-puberty males compete in an activity designated for women or girls.

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¹ Institute of Medicine (US) Committee on Understanding the Biology of Sex and Gender Differences; Wizemann TM, Pardue ML, editors. Exploring the Biological Contributions to Human Health: Does Sex Matter? Washington (DC): National Academies Press (US); 2001. 2, Every Cell Has a Sex. <https://www.ncbi.nlm.nih.gov/books/NBK222291/>

² Handelsman, David, Hirschberg, Angelica, Bermon, Stephane. "Circulating Testosterone as the Hormonal Basis of Sex Differences in Athletic Performance." Endocrine Society. July 13, 2018. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6391653/>

³ Haynes, Stephie. "Dr. Ramona Krutizik, M.D. dicusses possible advantages Fallon Fox may have." SB Nation Bloody Elbow, March 20, 2013. <https://www.bloodyelbow.com/2013/3/20/4128658/dr-ramona-krutizik-endocrinologist-discusses-possible-advantages-fallon-fox-has/in/3847225>

⁴ Title IX of the Education Amendments of 1972. <https://www.justice.gov/crt/title-ix-education-amendments-1972>

⁵ Anderson, Ryan T. "After Inaugural Rhetoric on Unity, Biden Sign Divisive Transgender Executive Order." January 21, 2021. <https://www.heritage.org/gender/commentary/after-inaugural-rhetoric-unity-biden-signs-divisive-transgender-executive-order>

⁶ Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity of sexual Orientation. White House, Presidential Actions. January 20, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-preventing-and-combating-discrimination-on-basis-of-gender-identity-or-sexual-orientation/>

⁷ McCoy, Katie. "An executive order marginalizing women and girls." World Magazine. January 29, 2021. https://world.wng.org/2021/01/an_executive_order_marginalizing_women_and_girls

⁸ Lucas, Fred. "Frustrating and Disheartening: 3 Girls, losing to Biological Males in Track, Announce Lawsuit." Daily Signal. February 12, 2020. <https://www.dailysignal.com/2020/02/12/frustrating-and-disheartening-3-girls-losing-to-biological-males-in-track-announce-lawsuit/>

⁹ "Martina Navratilova seeks provisions to Joe Biden's executive order for transgender participation in sports." ESPN. February 3, 2021. https://www.espn.com/tennis/story/_/id/30827339/martina-navratilova-seeks-provision-joe-biden-executive-order-transgender-participation-sports

¹⁰ Ingle, Sean. "World Rugby bans trans women from elite women's game due to injury risks." The Guardian. October 9, 2020. <https://www.theguardian.com/sport/2020/oct/09/world-rugby-bans-trans-women-from-elite-womens-game-due-to-injury-risks>

¹¹ Anderson, Ryan T. "A Brave New World" Harvard Journal of Law and Public Policy, Volume 41. 2018. http://www.harvard-jlpp.com/wp-content/uploads/sites/21/2018/01/Anderson_FINAL-Copy.pdf



THE TRUTH ABOUT BIDEN'S CHILD CARE TAKEOVER

President Biden is working on a scheme to expand the reach of the federal government into American family life. Under the guise of a desire to increase the quality and affordability of child care, President Biden's American Families Plan will be a pledge to increase child care costs and a step towards government run child care.

The American Families Plan includes a proposal to subsidize the cost of child care for low and middle-income families for children under 5 years old above 7 percent of a parent's income.¹ This subsidy would apply to parents whose combined income is up to 1.5 times their state's median income. It also requires child care providers and educators to be paid a \$15 minimum wage, among other mandates.²

- **The plan promises to make child care affordable.**
 - Instead, child care costs will increase under the plan. By creating an arbitrary limit on what families pay for child care and having the taxpayer bear the remainder above that arbitrary limit of 7 percent, child care providers have an incentive to raise prices. For example, since the government began issuing endless student loans in higher education, the price of tuition has continued to rise over—400% increase from 1985-6 school year to 2018-2019.³ In the same way, American parents and taxpayers can expect costs to increase if Biden's plan is enacted.
 - Not only will a subsidy raise costs, so will mandating a minimum wage increase. The Heritage Foundation estimates that a \$15 minimum wage in child care will increase costs by 21 percent.⁴ As costs of child care inevitably rise, the government will be incentivized to subsidize child care for even more families and become a step toward wholly government-run child care.
- **The plan promises to invest money in high-quality child care and in the child care workforce.**
 - Government subsidies are not the solution to helping families find quality child care. Rather, the government should allow for an environment in which child care options are increased and families can flourish by reducing regulations on providers. The current high child care costs are caused in part by burdensome regulations that have little to do with safety but result in pushing out small family child care providers. Early Childhood National Centers reported that the number of family child care providers and child care centers declined from 2011-2017, including a 35 percent decline of small family child care providers. During the same period, child care licensing requirements increased.⁵ Federal and state governments should recognize their overregulation is contributing to the crisis of affordability.
 - Some of the money invested will be redirected to unions through dues skimming. In some states with unionized child care providers, unions deduct fees from payments they receive from Temporary Assistance for Needy Families or Child Care Development Fund. Similarly, money in the American Families Plan for some child care providers will be paid first to unions.⁶
 - Faith-based organizations, who have a history of providing high-quality child care, would be vulnerable with these government subsidies. President Biden's plan would give federal financial assistance to directly to providers. This practice creates more opportunities for the government to oversee these providers and impose requirements that may be against their deeply held religious beliefs.⁷

- **The plan predicts these changes will allow one million more parents to enter the labor force.**
 - President Biden’s plan ignores the truth about why parents choose child care. While the cost of care is a factor, parents most common reasons to use or not use child care relate to outside job options and childrearing priorities.⁸ Thus, providing a subsidy will likely not change a parent’s decision whether or not to use child care.
 - Further, this plan imposes a one-size-fits-all arrangement for American families. Families may choose to exchange potentially higher income for time at home with their children, because this arrangement is best for them. Instead, the government should support strong families and their ability to raise their children as they choose. Those without children and families that choose to have one parent stay at home should not be required to fund the child care of those who make a personal choice to both work outside the home.⁹
 - Lastly, there are already opportunities for low-income families to receive child care assistance. The Child Care and Development Fund (CCDF) provides federal funding for child care for low-income families as a safety net. This includes child care funds through the Child Care and Development Block Grant (CCDBG) Act, the Child Care Entitlement to States, state maintenance-of-efforts and matching funds, and Temporary Assistance for Needy Families (TANF).¹⁰ Furthermore, Head Start is an early childhood education for low-income children administered by the Department of Health and Human Services. The program provides grants and services for children ages 3-5 at no cost to low-income families. Early Head Start also provides similar grants and services for pregnant women and children ages 0-2.¹¹

While the Biden Administration will hide behind the promise of helping children, government subsidized child care will only further extend the government’s hand into families’ decisions regarding how to raise their children. If Congress and state governments truly want to help families who are hardest hit by high child care costs, they will reduce unnecessary regulations to create space for good paying jobs and more child care options.

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¹ “Fact Sheet: The American Families Plan.” The White House. April 28, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/>

² Id.

³ Cooper, Preston. “How Unlimited Student Loans Drive Up Tuition.” Forbes. February 22, 2017. <https://www.forbes.com/sites/prestoncooper2/2017/02/22/how-unlimited-student-loans-drive-up-tuition/?sh=a21dc2752b63> and “Tuition Costs of Colleges and Universities.” National Center for Education Statistics. 2019. <https://nces.ed.gov/fastfacts/display.asp?id=76>

⁴ Greszler, Rachel. “Unintended Consequences of \$15 Minimum Wage: Higher Child Care Costs.” The Heritage Foundation. February 12, 2021. <https://www.heritage.org/jobs-and-labor/commentary/unintended-consequence-15-minimum-wage-higher-child-care-costs>

⁵ Rachidi, Angela. “The problem with child care regulations.” American Enterprise Institute. January 24, 2020. <https://www.aei.org/poverty-studies/the-problem-with-child-care-regulations/>

⁶ Martin, Chase. “Ending the Skimming of Union Dues from Federal Child Care Funds.” Mackinac Center. March 12, 2019. https://www.mackinac.org/26363#_ftn6 and “Dues Skimming FAQs” State Policy Network. <https://spn.org/dues-skimming-faqs/>

⁷ “Letter to Congress on the Federal Budget Reconciliation.” U.S. Conference of Catholic Bishops. September 7, 2021. <https://www.usccb.org/resources/letter-congress-federal-budget-reconciliation-september-7-2021> and <https://edlabor.house.gov/imo/media/doc/ANS%20to%20the%20Committee%20Print%20Offered%20by%20Mr.%20Scott.pdf>

⁸ Stone, Lyman. “More, Choice, Fewer Costs: Four Key Principles to Guide Child Care Policy.” American Enterprise Institute. May 20, 2021. <https://www.aei.org/articles/more-choice-fewer-costs-four-key-principles-to-guide-child-care-policy/>

⁹ Greszler, Rachel. “The Unintended Consequences of the American Families Plan.” The Heritage Foundation. May 24, 2021. <https://www.heritage.org/budget-and-spending/commentary/the-unintended-consequences-the-american-families-plan>

¹⁰ Lynch, Karen E. “Trends in Child Care Spending from the CCDF and TANF.” Congressional Research Service. June 16, 2016. <https://www.crs.gov/Reports/R44528?source=search&guid=ba0d87b3b88549038a92e418858a4944&index=0>

¹¹ Lynch, Karen E. “Head Start: Overview and Current Issues.” Congressional Research Service. December 5, 2019. <https://www.crs.gov/Reports/IF11008?source=search&guid=10c393dd165f446eaf7479e10c6994db&index=0>



THE INEQUITY OF STUDENT LOAN FORGIVENESS

Student loan forgiveness is regressive, inequitable, and it will not stimulate the economy. Instead, it will create an incentive for students to accumulate more debt and award as much as \$192 billion to the top 20 percent of income earners.¹ Forgiveness is fundamentally unfair because it will ultimately be paid by taxpayers—many who have faithfully paid off their student loans, worked hard to pay for college, or chose not to go to college at all.

- **Outstanding federal student loan debt currently totals \$1.7 trillion and is disproportionately held by the wealthy.²**
 - Of 255 million adult Americans, 45 million have student loan debt. Those in the top fifth of household income hold \$3 in student loans for every \$1 held by the bottom fifth of household incomes.³
 - Graduate students hold 40 percent of student loan debt, and the fields of study with the largest student loans include high income dentistry, medicine, and law.⁴
- **Though Democrats claim student loan debt cancellation will aid the COVID-19 pandemic recovery, cancellation does nothing to help the 210 million Americans without student debt who are also suffering.**
 - In fact, those without college degrees have faced unemployment rates 1.75-2 times higher than those with college degrees during the COVID-19 pandemic.⁵ Student loan debt cancellation would require these hard-working Americans who have been hurt worst by the pandemic to pay for the debt of those who are still employed or able to find jobs.
 - Furthermore, students already have loan-payments and interest accrual suspended until September 30, 2021.⁶ That is to say, the argument for canceling loan payments which are already temporarily canceled to aid in the pandemic recovery is meaningless.
- **Programs already exist to aid students in re-paying their loans through income-driven repayment (IDR) plans. As of 2019, 40 percent of borrowers are enrolled in an IDR plan.⁷**
 - These plans allow students to repay their loan at a speed that works for their income level, and these plans offer full forgiveness after 20 or 25 years.⁸ Those who continue to promote student loan forgiveness need to answer why forgiveness is a better alternative to the existing generous repayment plans.
 - Additionally, for borrowers already enrolled in income-driven repayment plans, their monthly payment would be unaffected by forgiveness. Their payments are already set at the rate of their income, not the amount left to be paid.
- **An underlying reason for excessive student loan debt is increasing higher education costs.**
 - From 1980 to 2016, average yearly tuition has increased a whopping 238 percent, an increase greater than the rate of healthcare prices. When the government subsidizes tuition cost through loans and grants, it “creates artificially high demand for colleges degrees, driving tuition prices higher and increasing the overall cost for students and taxpayers.”⁹
 - The Federal Reserve Bank of New York found that for every additional dollar of subsidized federal student loan, tuition increases 60 cents.¹⁰

- Thus, cancelling student loans will only serve to exacerbate the problem of higher education costs, which is one of the driving factors of student loan debt.

Congress should resist calls for loan forgiveness and instead focus on market driven solutions that bring down the cost of higher education, including reducing the government's role in the student loan market.¹¹ Congress should encourage colleges and universities to recruit students to study subjects that will lead to quality jobs. Moreover, Congress should focus on re-starting student loan payments as the economy reopens, improving income-based repayment plans, and ending any loan forgiveness. By doing this, Congress can strengthen the value of higher education for this generation and those to come.

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¹ Polumbo, Brad. "Top 20% Gets 6x More Benefits from Student Debt Cancellation than Bottom 20%, New Study." *Foundation for Economic Education*. December 1, 2020. <https://fee.org/articles/top-20-gets-6x-more-benefits-from-student-debt-cancellation-than-bottom-20-new-study-finds/>

² "Consumer Credit Outstanding (Levels)" https://www.federalreserve.gov/releases/g19/HIST/cc_hist_memo_levels.html

³ Cooper, Preston. "The Case Against Student Loan Forgiveness." *Forbes*. November 17, 2020. <https://www.forbes.com/sites/prestoncooper2/2020/11/17/the-case-against-student-loan-forgiveness/?sh=e427487464c6>

⁴ Burke, Lindsey M. Ph.D. "Canceling Student Loan Debt Isn't Smart or Fair Response to COVID-19." *The Heritage Foundation*. March 23, 2020. <https://www.heritage.org/education/commentary/canceling-student-loan-debt-isnt-smart-or-fair-response-covid-19> and Lindsay, Thomas K., Ph.D., Gillen, Andrew, Ph.D., Vedder, Richard, Ph.D. "Student loan forgiveness would be windfall for dentists, doctors and lawyers." *Texas Public Policy Foundation*. January 25, 2021. <https://www.texaspolicy.com/student-loan-forgiveness-would-be-windfall-for-dentists-doctors-and-lawyers/>

⁵ Nietzel, Michael T. "Unemployment Rates During the Pandemic are Much Lower for Adults with a College Degree." *Forbes*. September 8, 2020. <https://www.forbes.com/sites/michaelnietzel/2020/09/08/unemployment-rates-during-the-pandemic-are-much-lower-for-those-with-a-college-degree/?sh=7357f5b6e29c>

⁶ Coronavirus and Forbearance Info for Student, Borrowers, and Parents. Federal Student Aid, U.S. Department of Education. <https://studentaid.gov/announcements-events/coronavirus>

⁷ Catherine, Sylvain and Yannelis, Constantine. "The Distributional Effects of Student Loan Forgiveness." Becker Friedman Institute, University of Chicago. December 2020. https://bfi.uchicago.edu/wp-content/uploads/2020/11/BFI_WP_2020169.pdf

⁸ "If your federal student loan payments are high compared to your income, you may want to repay your loans under an income-driven repayment plan." Federal Student Aid, Department of Education. <https://studentaid.gov/manage-loans/repayment/plans/income-driven>

⁹ De Rugy, Veronique and Salmon, Jack. "Reevaluating the Effects of Federal Financing in Higher Education." Mercatus Center, George Mason University. August 13, 2019. <https://www.mercatus.org/publications/education-policy/reevaluating-effects-federal-financing-higher-education>

¹⁰ Lucca, David, Nadauld, Taylor, Shen, Karen. "Credit Supply and the Rise in College Tuition: Evidence from the Expansion in Federal Student Aid Programs." Federal Reserve Bank of New York. February 2017. https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr733.pdf?la=en

¹¹ Gillen, Andrew, Ph.D. "Unleashing Market-Based Student Lending." *Texas Public Policy Foundation*. May 2020. <https://files.texaspolicy.com/uploads/2020/05/01102229/A.Gillen-Market-based-Student-Lending.pdf>



IMPROVING EDUCATIONAL OUTCOMES BY EMPOWERING PARENTS

Students who are denied the opportunity to obtain a high-quality education are faced with the dire consequences of attending failing schools, a greater risk of exposure to crime, and lost earning potential.

- Students that complete high school have life-long opportunities to provide for themselves and their families. Alternatively, the lack of a quality education presents life-altering disadvantages.
 - Those without a high school diploma are more likely to end up in prison. The Bureau of Justice Statistics’ reports that 75% of inmates in state prisons, 59% in federal prison, and 69% in jails did not complete high school.¹ Failing high schools have created a school-to-prison pipeline.
 - A male high school graduate that works until age 65 will earn on average nearly \$333,000 more over his life than a male student without a high school diploma.²
- Some school districts in the United States have found success in reducing crime and increasing education quality by giving parents the ability to choose a school that is best for their child.
 - For example, in North Carolina, the Charlotte-Mecklenburg school system ended their decades-long program to bus children to other schools in order to maintain racial balance and, instead, instituted a school choice system. The results after 7 years: Every student experienced an increase in quality of education and fewer students ended up in prison.³
 - A joint Harvard and Princeton study found that winning a New York charter school lottery reduced likelihood of male incarceration by “essentially” 100% and female teen pregnancy by 59% from the study’s control average.⁴
- Parents should have the choice to use their portion of the \$709 billion taxpayers spend on education to send their children to schools that are prepared to educate their students.⁵
 - 69% of registered voters support giving parents the right to use the tax dollars set aside for their child’s education to send them to a school that best meets their child’s needs.⁶
- Empowering parents to choose schools provides students with the best opportunity to achieve the American Dream. House Republicans are committed to providing opportunities for students to attend the school that is best for them.
 - Former President Trump took steps to reduce federal overreach in education and supported STEM education. The Trump Administration was committed to assisting charter schools and improving the D.C. Opportunity Scholarship Program.⁷

Publ. 2020 (updated November 2021).

¹ The U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Education and Correctional Populations,” NCJ 195670, <https://bjs.gov/content/pub/pdf/ecp.pdf>, January 2003.

² <https://files.eric.ed.gov/fulltext/ED501066.pdf>

³ Deming, David, Harvard University, *The Quarterly Journal of Economics*, “Better Schools, Less Crime?” https://scholar.harvard.edu/files/ddeming/files/deming_bslc_qje.pdf at p. 2071 (2011).

⁴ Dobbie, Will and Fryer, Roland, Princeton University and Harvard University, *The Medium-Term Impacts of High-Achieving Charter Schools*, https://scholar.harvard.edu/files/fryer/files/dobbie_fryer_hcz_01062015_1.pdf at p.3. (2014).

⁵ The U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics, “Back to school statistics,” https://nces.ed.gov/fastfacts/display.asp?id=372#PK12_expenditures (Accessed on October 1, 2020).

⁶ “Support for School Choice Surges as Schools Start,” <https://www.federationforchildren.org/support-for-school-choice-surges-as-schools-start/>, September 23, 2020.

⁷ The White House, “President Trump is Fighting for Every Family’s Freedom to Choose the Best Possible Education for their Children,” <https://www.whitehouse.gov/briefings-statements/president-trump-is-fighting-for-every-familys-freedom-to-choose-the-best-possible-education-for-their-children/>, February 4, 2020.



EXTEND 529 SAVINGS PLANS TO HOMESCHOOL EXPENSES

Under current law, 529 savings plans allow parents and students to save and use money for college without the earnings being subject to federal taxes. The Tax Cuts and Jobs Act (TCJA)¹ expanded 529 plans to include K-12 private school tuition.

Parents should have maximum flexibility in choosing where their children are educated. As such, 529 plans should be expanded to also include homeschooling expenses.

BACKGROUND

529 college savings plans,² named after Section 529 of the Internal Revenue Code and considered a Qualified Tuition Program (QTP), were created in 1996 to encourage savings for future higher education costs. These plans are sponsored by states or educational institutions and enjoy federal tax-free earnings and withdrawals.

There are two types of 529 plans, prepaid tuition plans and education savings plans:

- **Prepaid tuition plans** are generally sponsored by state governments and have residency requirements.
- **Education savings plans** are investment accounts for the beneficiary's future qualified education expenses at any college or university.

All states and the District of Columbia have at least one type of 529 plan. Some states also allow taxpayers to deduct any contributions when they file their yearly taxes.

Because of the TCJA,³ families can now use up to \$10,000 per year per child of their 529 savings plans for “tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school.”⁴

During Senate consideration of TCJA, Sen. Ted Cruz (R-TX) offered an amendment to expand 529s to include K–12 public, private, and religious school tuition, as well as homeschool expenses. Vice President Pence cast the tiebreaking vote during adoption of the Cruz amendment. Ultimately, Senators Bernie Sanders (I-VT) and Ron Wyden (D-OR) challenged the homeschool portion of the amendment under the Byrd Rule⁵ and succeeded, thus stripping out the 529 expansion for homeschool expenses.

530 savings plans⁶, also known as Coverdell Savings Accounts, do permit spending on homeschooling expenses, but they must be funded with after-tax dollars and contributions may not exceed \$2,000 annually. Further expanding 529s to cover homeschooling expenses would make 530 plans unnecessary.

POLICY SOLUTIONS

Congress should pass Student Empowerment Act (H.R. 605) which would include expenses in connection with a homeschool as eligible expenses under a 529 plan.

Now that 529 accounts can be used for K-12 expenses, Congress should streamline the tax code by eliminating Coverdell Savings Accounts.

Publ. 2019 (updated November 18, 2021).

¹ The Tax Cuts and Jobs Act of 2017(TCJA), Pub.L. 115–97, 131 Stat. 2054 (2017).

² 26 U.S.C. § 529.

³ TCJA, *supra*, note 1.

⁴ *Id.*

⁵ The Byrd Rule restricts elements of reconciliation legislation, the vehicle for TCJA, by prohibiting “extraneous” provisions. See, Bill Heniff Jr., Cong. Research Serv., RL30862, The Budget Reconciliation Process: The Senate’s “Byrd Rule” (2016).

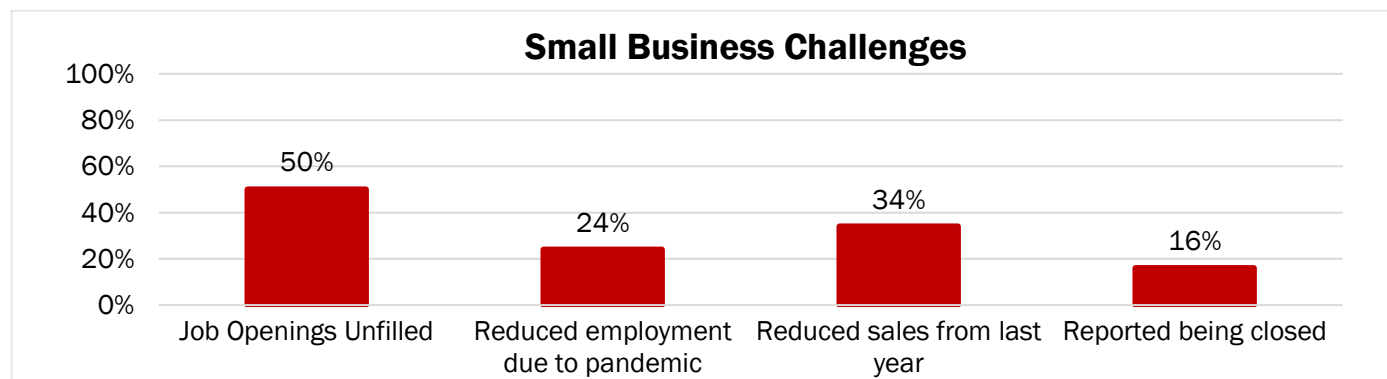
⁶ 26 U.S.C. § 530.



LABOR SHORTAGES HIT SMALL BUSINESS

While businesses across the board are struggling due to worker shortages, surveys show that small businesses, who have less ability to offer more generous pay and benefits, have been hit the hardest.¹ Although businesses may need to employ new methods to attract workers as the economy reopens, businesses should not be hindered in these efforts by the federal government.

- **Over a year into the pandemic, small businesses are still struggling to find workers.**
 - Rather than workers filling open positions as the economy has continued to reopen, job openings have climbed to new highs month after month.²
 - According to a National Federation of Independent Business survey, fifty percent of small business owners reported job openings in August 2021 that they were unable to fill, a 48-year record high.³
 - Additionally, surveys found half of small businesses have found it harder to find qualified workers compared to a year earlier and 28% identify this as their single most important problem.⁴
- **Challenges are widespread and persistent.**
 - Although business closure rates are falling across the U.S. from levels last year, closure rates remain elevated compared to pre-pandemic times. Further, minority-led small businesses were at least 50 percent more likely to report being closed than other small businesses.⁵
 - Sales overall are rising, but the majority of consumer-facing small businesses in retail and hospitality reported a reduction in sales compared to the same period last year.⁶
 - Small businesses in the U.S. continue to report reduced employment since the beginning of the year, including those in the transport and hospitality sectors who have been hit worst.⁷



Source: Facebook Global State of Small Business Report - September 2021

- **Small businesses are turning to technology and overtime to make up for shortages.**
 - Although 26 percent of small businesses plan to raise compensation in the next three months to attract workers, some experts say it isn't enough.⁸
 - Consequently, one survey finds nearly one in three small businesses adopted new systems or technology to sustain operations amid this worker shortage.⁹

- Other businesses are turning to their existing workforce to pick up extra hours.¹⁰
- **The government shouldn't continue to suppress labor force participation.**
 - While labor force participation has been trending downwards for years as the working population has aged, the pandemic caused it to free fall. The labor force participation rate fell roughly 3 percent from 63 to 60 percent in early 2020 and still hasn't fully recovered, leveling out at 61.7 percent in August 2021.¹¹
 - Despite claims to the contrary, research from the Federal Reserve Bank of San Francisco found that the enhanced and extended unemployment insurance (UI) benefits disincentivize returning to work.¹² States that cut UI benefits earlier also have lower rates of unemployment on average.¹³
 - Multiple rounds of stimulus payments also contributed to record high levels of disposable personal income and personal savings during the pandemic, allowing individuals to delay going back to work.¹⁴
 - The Biden Administration has argued extending the enhanced child tax credit payments and subsidizing child care are necessary to get many parents back into the workforce, but simply giving parents money will not change the limited supply of care due to burdensome regulations that is dwindling further during the pandemic.¹⁵ (*Read more in RPC's brief entitled "The Truth About Biden's Child Care Takeover."*¹⁶)
 - Further, research from the University of Chicago's Becker Friedman Institute finds Biden's American Families Plan proposal to extend and further enhance the child tax credit, which was temporarily enhanced under the American Rescue Plan Act, would create sizable work disincentives and lead to 1.5 million workers leaving the labor force.¹⁷
 - Despite continued pain felt by businesses experiencing worker shortages, the Biden administration announced it would establish vaccine mandates on businesses with more than 100 employees.¹⁸ As a result, 7 million affected employees across the country report that they will not get the vaccine even if the mandate is implemented.¹⁹

Whether enhanced child tax credits, UI benefits, or stimulus payments, government handouts can lead to or exacerbate worker shortages, because Americans learn to rely on government checks instead of those earned on their own. Burdensome government mandates coupled with handouts only make finding workers more difficult. Small businesses across the nation will be forced to close their doors or permanently turn to technology to replace workers if this trend continues.

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¹ Sheryl Sandberg. As Small Businesses Continue to Struggle Globally, Women and Minority-Led Ones Are Hardest Hit. Facebook. April 8, 2021. <https://about.fb.com/news/2021/04/latest-state-of-small-business-report/>

² Job Openings and Labor Turnover. Bureau of Labor Statistics U.S. Department of Labor. Tuesday 12, 2021. <https://www.bls.gov/news.release/pdf/jolts.pdf>

³ William C. Dunkelberg and Holly Wade. NFIB Small Business Economic Trends. August 2021. <https://assets.nfib.com/nfibcom/SBET-August-2021.pdf>

⁴ Eric Rosenbaum. America's small businesses still can't find workers, but that's not their biggest problem. Small Business Playbook. August 10, 2021. <https://www.cnbc.com/2021/08/10/the-labor-shortage-isnt-main-streets-biggest-problem.html> and William C. Dunkelberg and Holly Wade. NFIB Small Business Economic Trends/ August 2021. <https://assets.nfib.com/nfibcom/SBET-August-2021.pdf>

⁵ Christopher Hooton, Ph.D. Global State of Small Business. Facebook. September 2021. <https://dataforgood.fb.com/wp-content/uploads/2021/09/Global-State-of-Small-Business-Report-September-2021.pdf>

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* and Ian Thomas. Raising wages isn't enough to attract and keep workers, experts say. Workforce Wire. September 1, 2021. <https://www.cnbc.com/2021/09/01/raising-wages-isnt-enough-to-attract-and-keep-workers-experts-say-.html>

⁹ Small Business Recovery Survey. Morning Consult + Verizon. August 2021. <https://www.verizon.com/about/sites/default/files/Small-Business-Recovery-Survey-9-8-2021.pdf>

¹⁰ Lauren Weber. Companies Use Overtime to Solve Worker Shortages. That May Cost Them More Workers. The Wall Street Journal. September 18, 2021. <https://www.wsj.com/articles/companies-use-overtime-to-solve-worker-shortages-that-may-cost-them-more-workers-11631937827>

¹¹ Labor Force Participation Rate. Fred Economic Data. October 8, 2021. U.S. Bureau of Labor Statistics, Labor Force Participation Rate [CIVPART], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/CIVPART>, October 6, 2021.

¹² Nicolas Petrosky-Nadeau and Robert G. Valletta. UI Generosity and Job Acceptance: Effects of the 2020 CARES Act. Federal Reserve Bank of San Francisco. June 2021. <https://www.frbsf.org/economic-research/publications/working-papers/2021/13/>

¹³ Local Area Unemployment Statistics. U.S. Bureau of Labor Statistics. September 17, 2021. <https://www.bls.gov/web/laus/laumstrk.htm>

¹⁴ Real Disposable Personal Income. Fred Economic Data. October 1, 2021. U.S. Bureau of Economic Analysis, Real Disposable Personal Income [DSPIC96], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/DSPIC96>, October 6, 2021 and Personal Saving Rate. Fred Economic Data. October 1, 2021. U.S. Bureau of Economic Analysis, Personal Saving Rate [PSAVERT], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PSAVERT>, October 7, 2021.

¹⁵ Treasury Releases Report Showing U.S. Childcare System Overburdens Families and Causes Shortages Due to Inadequate Supply. U.S. Department of the Treasury. September 15, 2021. <https://home.treasury.gov/news/press-releases/jy0354> and Angela Rachidi, The problem with childcare regulations. AEIdeas. January 24, 2020. <https://www.aei.org/poverty-studies/the-problem-with-child-care-regulations/> and Diana Thomas and Devon Gorry. Regulation and the Cost of Child Care. Mercatus Center George Mason University. August 17, 2015. <https://www.mercatus.org/publications/regulation/regulation-and-cost-child-care> and Heather Long, ‘The pay is absolute crap’: Child-care workers are quitting rapidly, a red flag for the economy. The Washington Post. September 19, 2021. <https://www.washingtonpost.com/business/2021/09/19/childcare-workers-quit/>

¹⁶ The Truth about Biden’s Childcare Takeover. House Republican Policy Committee. <https://republicanpolicy.house.gov/sites/evo-subsites/republicanpolicy.house.gov/files/evo-media-document/The%20Truth%20About%20Biden%27s%20Child%20Care%20Takeover.pdf>

¹⁷ Kevin Corinth, Bruce Meyer, Matthew Stadnicki, Derek Wu. The Anti-Poverty, Targeting, and Labor Supply Effects of the Proposed Child Tax Credit Expansion. Becker Friedman Institute. October 7, 2021. <https://bfi.uchicago.edu/working-paper/2021-115/>

¹⁸ Vaccinating the Unvaccinated. The White House. <https://www.whitehouse.gov/covidplan/>

¹⁹ Joseph Briggs, Daan Struyven, Sid Bhushan. US Daily: The Effect of the Biden Vaccine Mandate on Vaccination and Employment. September 13, 2021. <https://www.gspublishing.com/content/research/en/reports/2021/09/13/cd67a3b5-bb9e-4659-b605-6618d5aa825f.html>



MINIMUM WAGE

According to the nonpartisan Congressional Budget Office (CBO), raising the minimum wage to \$15 an hour would impose numerous unintended consequences, such as 1.4 million in job losses, higher prices of goods and services, and a permanent class of unemployable workers.¹ Congress should focus on helping Americans get back to work, not taking more jobs away.

- President Biden has released a plan that supports increasing the federal minimum wage from the current \$7.25 level to \$15 per hour.² Accordingly, Democrats reintroduced S. 53, the Raise the Wage Act, on January 26, 2021.
 - Currently, 29 states have a higher minimum wage than the federal level.³ The state and regional levels are where these matters should be addressed.
- Instead of federal intervention, with a one-size-fits all mandate, Congress should allow states and municipalities to address the issue of minimum wage to reflect **regional differences**. For example:
 - The cost of living index in Washington, D.C. is 152.1, and 75.9 in Ozark, AL. Given that it is 50% cheaper to live in Ozark, AL, a \$15 minimum wage is likely unsustainable.⁴
 - The Montgomery County, MD, City Council passed a \$15 wage increase with a divided vote 5-4. The County Executive vetoed the bill and required a study to assess the implications of the wage increase. The 2017 report summary states the minimum wage was ultimately not increased because, “In short, the benefits from a minimum wage increase have the potential to be significant. However, workers who lose their jobs or are not hired as a result will not experience them.”⁵
 - The study projected close to 47,000 job losses by the year 2022 to mostly low-income wage earners, with the county experiencing a projected income loss of almost \$400 million.
- The underlying reason low-skilled, low-wage earners will likely lose their employment is **automation**, according to a study by the National Bureau of Economic Research (NBER).
 - The study concluded, “increasing the minimum wage decreases significantly the share of automatable employment held by low-skilled workers and increases the likelihood that low-skilled workers in automatable jobs become nonemployed or employed in worse jobs.”⁶
 - A separate NBER study also found that minimum wage increases “also lead to lower bank credit, higher loan defaults, lower employment, [and] a lower entry and higher exit rate for small businesses.”⁷
- The findings of the Montgomery County and NBER studies can be seen playing out in daily life, from substituting self-service checkout to cashiers, to automated menu ordering in restaurants. Examples include:⁸
 - Flippy, the Burger-Flipping Robot, can work all day at a Pasadena CaliBurger restaurant without getting tired. According to restaurant management, Flippy “doesn’t mess up as much” and can perform certain tasks “better than my average employee.”⁹
 - A Flippy robot can cost fast food chains as low as \$3 an hour, or \$2,000 per month,¹⁰ and requires no additional benefits, such as workers’ compensation.
 - Meanwhile, in Washington State: Simone Barron, a self-identified progressive, considers herself a victim of the unintended consequences related to Seattle’s \$15 minimum wage hike.¹¹ Prior to the hike,

Ms. Barron, a waitress, worked four shifts to provide for her family. After the wage increase, Ms. Barron's employer restructured employee compensation, effectively eliminating tips, in order to keep the restaurant in business. Ms. Barron now has to work six shifts instead of four to maintain a comparable level of income, even though her salary was "increased."¹²

- An estimated 22 million Americans lost their jobs during the height of the COVID-19 pandemic.¹³ President Biden's \$15 federal minimum wage plan would send another million Americans to the unemployment line. Congress should focus instead on reopening the economy, eliminating burdensome regulations, and supporting pro-growth reforms to the tax code. An honest discussion requires us to address the positives – increased earnings for some, and the negatives – unemployment, perhaps permanent, for others. Rushing this process on a party line vote, does not amount to honest discussion.

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¹ <https://www.cbo.gov/system/files/2019-07/CBO-55410-MinimumWage2019.pdf>

² While this is the minimum allowed under federal law, states are free to pursue their own wage laws in excess of \$7.25, and many states have adopted minimum wage laws above the federal level. <https://www.whitehouse.gov/briefing-room/legislation/2021/01/20/president-biden-announces-american-rescue-plan/>

³ <https://www.epi.org/minimum-wage-tracker/> and <https://www.cnn.com/2021/01/20/us-is-closer-than-ever-to-a-15-minimum-wage-with-biden-presidency.html>

⁴ <https://www.bestplaces.net/cost-of-living/washington-dc/ozark-al/50000>

⁵ https://montgomerycountymd.gov/OPI/Resources/Files/2017/MC_Minimum-Wage-Impact-Analysis_7-31-2017.pdf

⁶ This is demonstrated from a recent study by the National Bureau of Economic Research, People Versus Machines: The Impact of Minimum Wages on Automobile Jobs. <https://www.nber.org/papers/w23667>

⁷ Small, young, labor-intensive establishments located in competitive and low-income areas also experience higher financial stress. https://www.nber.org/system/files/working_papers/w26523/w26523.pdf

⁸ The Employment Policies Institute's (EPI) "Faces of \$15" website features stories of workers and businesses harmed by minimum wage hikes across the country. https://www.facesof15.com/?gclid=EAIaIQobChMIrP-T1rCt7gIVA5KGCh3uDwGDEAAYASAAEgJV-_D_BwE

⁹ <https://www.youtube.com/watch?v=KJVOFqunm5E> and *see also* <https://thespoon.tech/calibur-burger-adds-a-second-flippy-robot-to-make-french-fries/>

¹⁰ <https://www.latimes.com/business/technology/story/2020-02-27/flippy-fast-food-restaurant-robot-arm> and <https://www.theburnin.com/startups/miso-robotics-burger-flipping-robot-only-costs-3-per-hour-2020-2/>

¹¹ Prager University, accessed at https://assets.ctfassets.net/qnesrjodfi80/6bZ7XbQwRZrBFBVpDVTBbD/f52de5e5c911c1bc89c21378b819b192/Barron-Minimum_Wage_Cost_Me_My_Job-Transcript.pdf

¹² https://edlabor.house.gov/imo/media/doc/Testimony_Barron020719.pdf and <https://www.wsj.com/articles/seattles-wage-mandate-kills-restaurants-11576195087>. In January 2020, Seattle raised its minimum wage again to \$16.39 per hour. A restaurant Ms. Barron worked at closed shortly before this took effect, and Ms. Barron lost her job. Wall Street Journal, Dec. 12, 2019, accessed at <http://archive.is/SivKh>

¹³ <https://www.forbes.com/sites/jonathanponciano/2020/11/30/it-could-take-4-years-to-regain-the-22-million-jobs-lost-during-covid-19-pandemic-moodys-warns/?sh=57dd1e254332> and <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>



PROTECTING WORKERS' RIGHTS

Currently, 23 states force employees to surrender their hard-earned dollars to union lobbyists.¹ Meanwhile, 27 states have passed Right-to-Work laws, which protect workers' rights by allowing them to choose whether to join a union.

BACKGROUND

Union membership across the U.S. has steadily declined over the last 50 years. In 1983, 20 percent of American workers, or 17.7 million workers, were union members. In 2020, just 10.8 percent of workers, or 14.3 million workers, are union members.²

Democrats have a storied history of supporting union bosses instead of protecting workers' rights. On March 9, 2021, for example, House Democrats passed H.R. 842, the Protecting the Right to Organize (PRO) Act. The PRO Act would invalidate existing Right-to-Work laws and prohibit states from shielding workers from mandatory union dues. The bill would also require all workers' contact information to be shared with union leaders during organizing campaigns, undermine secret ballot union elections by authorizing a card check system, ban voluntary arbitration, and prohibit workers from decertifying unions in certain circumstances.³

Union Claim: Right-to-Work laws represent a political attack to destroy labor unions.

Response: Right-to-Work laws make sense even for employees who support unions. Workers gain power when they have a choice.

- Federal law already protects employees' right to organize.
- Employee choice incentivizes unions to improve services for their members.⁴ Right-to-Work laws do not prevent an employee from voluntarily joining a union or paying union dues.⁵

Union Claim: Workers only choose to opt-out of unions because they are ignorant of membership benefits.

Response: Workers are aware of the unions' claims about benefits. But, they are also aware of the risk. Workers are able to make decisions that are best for their families. Workers should not be forced to pay union dues if they determine that union membership will not represent their interests.

- An Alabama Amazon employee recently expressed her concern with the risk of paying union dues, stating, "I work hard for my money, and I don't want any of it going to a union that maybe can get us more pay, or maybe can get us longer breaks."⁶ Amazon employees in Bessemer, Alabama, voted to reject unionization in April 2021.⁷ On November 29, 2021, the National Labor Relations Board overturned the results, requiring a second election on unionization.⁸
- Workers at a Tennessee Volkswagen plant rejected a unionization bid in 2019. According to one employee, "We felt like we were already being treated very well by Volkswagen in terms of pay and benefits and bonuses." He adds that, based on the poor track record of the union, he did not want to join a sinking ship.⁹
- *Politico* reported union leaders unsuccessfully "worked for months to sell their [rank-and-file] members" on supporting Biden over Trump in the 2020 election, favoring political interests over representing their members' positions.¹⁰

Union Claim: Right-to-Work laws wrongly enable non-union members to benefit from the representation afforded to members.¹¹

Response: Unions are not required by federal law to represent workers who do not pay for membership.¹²

- While union leaders prefer to claim exclusive representation of employees, they are not required to represent non-union members.
- Employees should not be denied freedom of association based on the method of representation unions choose to employ.

POLICY SOLUTIONS

Right-to-Work laws restore employees' freedom to associate with unions. Congress should pass H.R. 1275, the National Right-to-Work Act. This bill would protect workers' rights by prohibiting employers from compelling employees to join a union as a condition of employment.¹³

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¹ Right to Work States. National Right to Work Legal Defense Foundation. <https://www.nrtw.org/right-to-work-states/>

² About one-third of U.S. workers belonged to a union in 1954. Union Members Summary. U.S. Bureau of Labor Statistics. January 22, 2021. <https://www.bls.gov/news.release/union2.nr0.htm> and Union Membership Trends in the United States. Congressional Research Service. August 31, 2004. <https://www.everycrsreport.com/reports/RL32553.html>

³ Backgrounder: Protecting the Right to Organize Act. Institute for the American Worker. February 8, 2021. http://i4aw.org/wp-content/uploads/2021/02/Protecting-the-Right-to-Organize-Act_Updated-2.5.21-3.pdf

⁴ Sherk, James. "Right to Work Increases Jobs and Choices." Heritage Foundation. November 9, 2011. <https://www.heritage.org/jobs-and-labor/report/right-work-increases-jobs-and-choices>

⁵ Straka, Ben. "Right to Work-what is it, and more importantly, what isn't it?" Freedom Foundation. May 8, 2018.

<https://www.freedomfoundation.com/labor/right-to-work-what-is-it-and-more-importantly-what-isnt-it/>

⁶ Higgins, Sean. "Maybe Workers Just Aren't That into You, Unions." Competitive Enterprise Institute. April 13, 2021.

<https://cei.org/blog/maybe-workers-just-arent-that-into-you-unions/>

⁷ Pisani, Joseph; Olson, Alexandra; D'Innocenzio Anne. "Amazon warehouse workers reject union bid in Alabama." Associated Press. April 9, 2021. <https://apnews.com/article/amazon-warehouse-workers-reject-union-alabama-5f73ee6c32d179d60540df7ec51b6ac7>

⁸ Amazon Services, LLC, National Labor Relations Board, November 29, 2021 <https://www.nlrb.gov/case/10-RC-269250>

⁹ Higgins, Sean. "Maybe Workers Just Aren't That into You, Unions." Competitive Enterprise Institute. April 13, 2021.

<https://cei.org/blog/maybe-workers-just-arent-that-into-you-unions/> <https://cei.org/blog/maybe-workers-just-arent-that-into-you-unions/>

¹⁰ Otterbein, Holly and Cassella, Megan. "Rank-and-file union members snub Biden for Trump." Politico. September 22, 2020.

<https://www.politico.com/news/2020/09/22/donald-trump-union-support-snob-joe-biden-418329>

^{xi} Erickson, Ryan and Walter, Karla. "Right to Work Would Harm All Americans." Center for American Progress Action Fund. May 18, 2017.

<https://www.americanprogressaction.org/issues/economy/reports/2017/05/18/167539/right-work-harm-americans/>

¹² Sherk, James. "Right to Work Increases Jobs and Choices." Heritage Foundation. November 9, 2011. <https://www.heritage.org/jobs-and-labor/report/right-work-increases-jobs-and-choices>

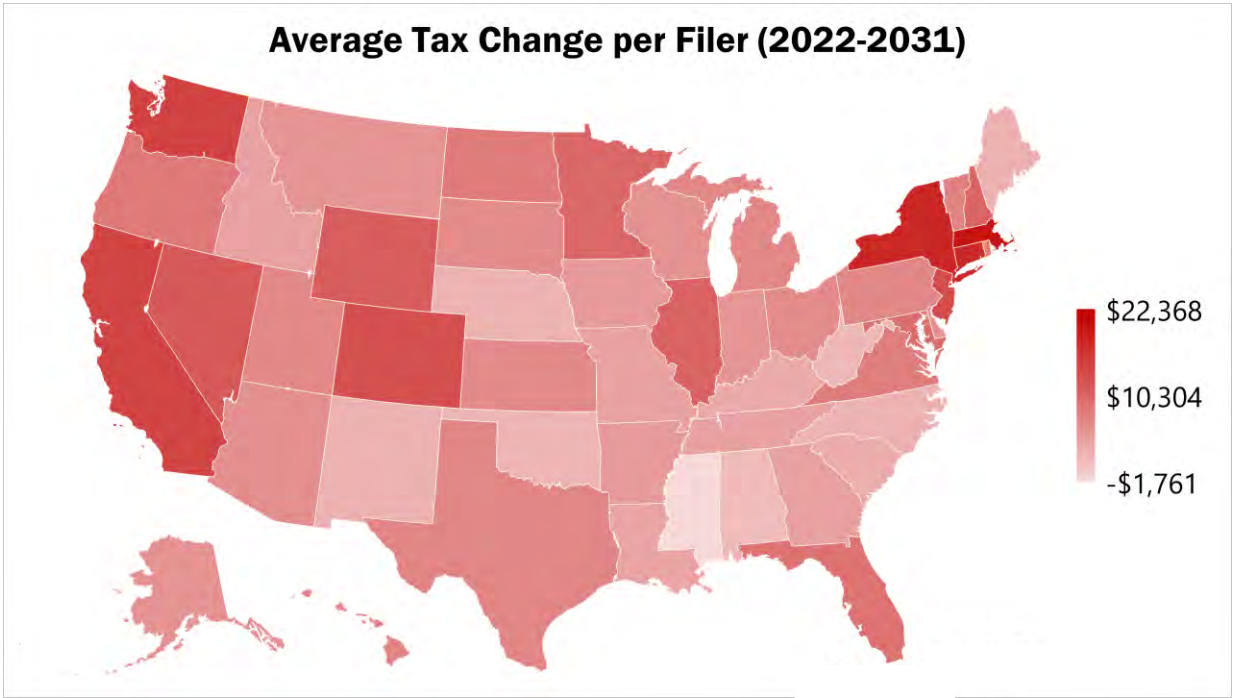
¹³ H.R. 1275- National Right-to-Work Act. <https://www.congress.gov/bill/117th-congress/house-bill/1275H.R>



BIDEN’S PROPOSED TAX HIKES AND BROKEN PROMISES

Despite President Biden’s promise to not raise taxes for anyone making under \$400,000, his fiscal year 2022 budget proposal does exactly that.¹ According to the left-leaning Tax Policy Center, over 60% of all filers and 75% of middle-income filers would see a tax increase under his budget.² Between higher inflation and proposed tax hikes, the middle-class, not just wealthy Americans, are paying the price for President Biden’s broken promises to finance his high-priced agenda.

The following charts show how an average filer’s tax burden would change on a state-by-state basis under the Biden Administration’s fiscal year 2022 budget, American Families Plan, and American Jobs Plan.³



Congress should reject President Biden’s plan to raise taxes on middle-income households. With the hidden tax of inflation already increasing costs and reducing real wages, Congress must not impose additional costs on hardworking Americans as we recover from the pandemic.⁴ As shown in the chart below, over the next ten years taxes will go up for the average filer in every state but Mississippi under President Biden’s tax proposals.⁵

State	Average Tax Change per filer (2022-2031)
Alabama	\$1,233
Alaska	\$5,470
Arizona	\$5,935
Arkansas	\$4,745
California	\$14,095
Colorado	\$12,839

Connecticut	\$17,378
Delaware	\$5,479
Florida	\$8,816
Georgia	\$4,089
Hawaii	\$6,687
Idaho	\$4,034
Illinois	\$10,491
Indiana	\$5,380
Iowa	\$4,815
Kansas	\$6,543
Kentucky	\$3,116
Louisiana	\$3,672
Maine	\$2,370
Maryland	\$9,452
Massachusetts	\$19,847
Michigan	\$6,590
Minnesota	\$9,977
Mississippi	-\$1,761
Missouri	\$4,049
Montana	\$5,380
Nebraska	\$2,216
Nevada	\$11,698
New Hampshire	\$10,389
New Jersey	\$13,147
New Mexico	\$2,332
New York	\$17,612
North Carolina	\$2,241
North Dakota	\$7,949
Ohio	\$6,259
Oklahoma	\$1,999
Oregon	\$8,244
Pennsylvania	\$6,788
Rhode Island	\$7,853
South Carolina	\$2,814
South Dakota	\$6,305
Tennessee	\$3,985
Texas	\$6,818
Utah	\$6,587
Vermont	\$7,211
Virginia	\$7,689
Washington, DC	\$22,368
Washington	\$14,306
West Virginia	\$1,750
Wisconsin	\$5,598
Wyoming	\$11,275

¹ Glenn Kessler. Joe Biden's Claim That He Won't Raise Taxes on People Making Less Than \$400,000. The Washington Post. August 31, 2020. <https://www.washingtonpost.com/politics/2020/08/31/joe-bidens-claim-that-he-wont-raise-taxes-people-making-less-than-400000/> and Budget of The U.S. Government Fiscal Year 2022. The White House Office of Management and Budget. https://www.whitehouse.gov/wp-content/uploads/2021/05/budget_fy22.pdf

² T21-0064 Major Tax Provisions in the Biden Administration's FY2022 Budget Proposal, by Expanded Cash Income Level, 2022. Tax Policy Center. June 9, 2021. <https://www.taxpolicycenter.org/model-estimates/tax-provisions-administrations-fy2022-budget-proposal-june-2021/t21-0064-major-tax>

³ Chart compiled by RPC using data from Huaqun Li and William McBride and Andrew Sloan and Tom Van Antwerp. The Impact of the Biden Administration's Tax Proposals by State and Congressional District. Tax Foundation. June 30, 2021. https://taxfoundation.org/biden-tax-plan-impact-state/?utm_source=Tax+Foundation+Newsletters&utm_campaign=e15e886507-EMAIL_CAMPAIGN_2019_10_17_07_28_COPY_02&utm_medium=email&utm_term=0_8387957ec9-e15e886507-429685222&mc_cid=e15e886507&mc_eid=cb5e6bf73a

⁴ News Release: Real Earnings June 2021. Bureau of Labor Statistic U.S. Department of Labor. 2021. <https://www.bls.gov/news.release/pdf/realer.pdf>

⁵ Chart compiled by RPC using data from Huaqun Li and William McBride and Andrew Sloan and Tom Van Antwerp. The Impact of the Biden Administration's Tax Proposals by State and Congressional District. Tax Foundation. June 30, 2021. https://taxfoundation.org/biden-tax-plan-impact-state/?utm_source=Tax+Foundation+Newsletters&utm_campaign=e15e886507-EMAIL_CAMPAIGN_2019_10_17_07_28_COPY_02&utm_medium=email&utm_term=0_8387957ec9-e15e886507-429685222&mc_cid=e15e886507&mc_eid=cb5e6bf73a



IMPROVE SMALL BUSINESS ACCESS TO GLOBAL MARKETS

Greater small business access to global trade can improve international supply chains and increase United States economic competitiveness.¹ Congress must assert its role in negotiating and implementing free trade agreements including the U.S.-Mexico- Canada Agreement (USMCA) and advocate for small business needs throughout the lifecycle of all trade agreements. Additionally, Congress must also exercise oversight authority over multi-agency federal trade activities.

BACKGROUND

Nearly 98 percent of exporting firms are small businesses; 280,496 small exporters generate \$460 billion of known export value.² However, small exporters represent only one percent of American small businesses and represent only 31.6 percent of total American export value.³

Public and private small business advocates have hailed the USMCA as a major win; The USMCA is the first U.S. trade agreement to include a chapter specifically for small and medium size exporters (SMEs). The chapter establishes a Committee on SME Issues comprised of government officials, and an annual SME Dialogue to facilitate stakeholder communication and participation.⁴ American small businesses will rely on Congress to ensure implementation of SME provisions within USMCA.

The road to export markets is complex, and existing programs to reduce trade barriers for small businesses should not add to the confusion. The Trade Promotion Coordinating Committee (TPCC) is an interagency task force comprised of twenty agencies that administer and regulate federal trade promotion and financing programs. Six member agencies, the U.S. Small Business Administration (SBA), U.S. Department of Commerce (Commerce), Export-Import Bank (Ex-Im), U.S. Department of Agriculture (USDA), U.S. Trade and Development Agency (USTDA), and the U.S. Department of State provide direct assistance to small businesses exporting overseas.⁵

Streamlined cooperation between TPCC member agencies, state trade agencies, and private sector partners would improve service delivery and simplify processes for small business clients. Increased oversight of overlapping and duplicative trade promotion and financing activities would reassert congressional budget authority and conservative spending principles.

POLICY SOLUTIONS

To maximize global competitiveness, proactive trade policies and services should prioritize small business access to international markets. Congress may consider policies to alleviate trade burdens and barriers, which may include:

- Streamlining regulations to ensure that domestic industries experience as little operational disruption and additional costs as possible, while complying with various environmental, labor, and health safeguards.
- Clarifying authorities, resources, and services offered by trade promotion agencies to prevent duplication and overlap.

¹ Congressional Research Service, Small Business Administration Trade and Export Promotion Programs 16 (2016), <https://www.crs.gov/reports/pdf/R43155>.

² Office of the Chief Counsel for Advocacy, Small Business Administration, Frequently Asked Questions 1 (2021), <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>

³ Id.

⁴ Office of the U.S. Trade Representative, United States-Mexico-Canada Agreement Fact Sheet Supporting America's Small and Medium-Sized Businesses (Nov. 2018), <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2018/november/united-states%E2%80%93mexico%E2%80%93canada-agreement>

⁵ Government Accountability Office (GAO), Export Promotion, Small Business Administration Needs to Improve Collaboration to Implement Its Expanded Role 1 (2013), <http://www.gao.gov/assets/660/651685.pdf>



CREATE A SIMPLIFIED AVERAGE TAX

Filing taxes is unnecessarily complicated for most Americans. While higher income earners employ tax accountants to take advantage of every complicated provision in the tax code, most filers are left to fend for themselves. Developing a simplified tax filing system would reduce compliance burdens for most taxpayers while preserving the traditional filing process for those who prefer to utilize it.

BACKGROUND

The Federal Government forces most Americans to hunt for tax deductions and credits if they wish to pay the correct amount of taxes owed. If a taxpayer misses filing a provision he or she is legally entitled to take, the taxpayer may end up overpaying. Incorrect credit and deduction claims may result in substantial fines and penalties.

The internal revenue code currently requires higher-income earners to calculate their tax liability through a simplified tax filing system called the alternative minimum tax (AMT) as well as their traditional filing.¹ The AMT compels filers to pay the higher of the two resulting tax bills.

Tax simplification shouldn't be exclusive to the wealthiest Americans — either through the AMT or the employment of accountants. According to the Internal Revenue Service (IRS), the adjusted gross income (AGI) floor for the top 20 percent of individual income taxpayers was \$50,464 in 2017.² In other words, developing a tax simplification option for taxpayers with AGIs less than \$50,464, would cover roughly 80 percent of taxpayers.

From 2001 to 2017, the average tax rate for the bottom 75 percent of AGIs was 5.88 percent.³ The bottom 50 percent of AGIs pay an even lower average rate of 3.46 percent.⁴ While the average tax rate appears much lower than the marginal rate brackets published by the IRS, it reflects the taxes Americans actually pay to the Federal Government when various income exclusions, deductions, and credits apply. Using these rates as a starting point for tax calculations could radically simplify taxes.

POLICY SOLUTIONS

Legions of lobbyists currently protect the myriad complexities of the current tax code. Rather than tinkering with the existing code, Congress should pass a simplified average tax (SAT) which would operate parallel to the traditional income tax system, much like the AMT, to make tax filing easier for most Americans.

Under a SAT, filers with AGIs below a certain threshold set by Congress (such as the \$50,464 mentioned previously) could calculate their tax liability by applying an IRS-published average tax for their AGI quartile to their current tax year AGI. Taxpayers filing the SAT would exchange the below-the-line deductions and credits for a significantly lower tax rate.

Unlike the AMT, which requires taxpayers to calculate tax bills under both systems and pay the higher amount, the SAT would serve as an optional simplified alternative for most taxpayers that would save time and might result in a lower tax bill as well.

¹ Internal Revenue Service, *Topic No. 556 Alternative Minimum Tax* (Jan. 28, 2019), <https://www.irs.gov/taxtopics/tc556>.

² Internal Revenue Service, *SOI Tax Stats - Individual Statistical Tables by Tax Rate and Income Percentile*, <https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-tax-rate-and-income-percentile>, Table 1, All Individual Returns Excluding Dependents: Number of Returns, Shares of Adjusted Gross Income (AGI) and Total Income Tax, AGI Floor on Percentiles in Current and Constant Dollars, and Average Tax Rates, by Selected Expanded Descending Cumulative Percentiles of Returns Based on Income Size Using the Definition of AGI for Each Year, Tax Years 2001-2017, <https://www.irs.gov/pub/irs-soi/17in01etr.xls>.

³ Internal Revenue Service, *SOI Tax Stats - Individual Statistical Tables by Tax Rate and Income Percentile*, <https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by-tax-rate-and-income-percentile>, Table 2. All Individual Returns Excluding Dependents: Number of Returns, Shares of Adjusted Gross Income (AGI) and Total Income Tax, and Average Tax Rates, by Selected Ascending Cumulative Percentiles of Returns Based on Income Size Using the Definition of AGI for Each Year, Tax Years 2001-2017, Total income tax divided by adjusted gross income, <https://www.irs.gov/pub/irs-soi/17in02etr.xls>.

⁴ *Id.*



OSHA – REGULATOR OF THE AMERICAN WORKPLACE

President Biden has weaponized the Occupational Safety and Health Administration (OSHA) to compel Americans to receive the COVID-19 vaccine. While OSHA began as an attempt to create safe workspaces, it has become a bureaucratic machine to regulate the entire American workplace.

BACKGROUND

- **OSHA was established within the Department of Labor (DOL) by Congress in 1970 with the goal of ensuring safe and healthy working conditions.¹**
 - OSHA sets and enforces safety and health standards along with training, outreach, education, and assistance.² Federal OSHA standards apply to private sector employees, the United States Postal Service, and federal government employees. These employers are required to create workspaces that are free from hazards according to the standards OSHA sets.³ OSHA may assess fines of up to \$13,600 per violation for failing to comply with the standards.⁴
 - A state or territory may preempt federal standards if the state creates its own standards that are approved by OSHA, “at least as effective” as OSHA’s, and monitored by OSHA.⁵
- **The Biden Administration issued two OSHA Emergency Temporary Standards (ETS) related to the COVID-19 pandemic.**
 - An ETS allows OSHA to bypass the normal rulemaking process, including circumventing the public notice-and-comment period.
 - OSHA may issue an ETS if two conditions are met:
 - 1) Employees are exposed to grave danger; and
 - 2) An ETS is necessary to protect employees from the danger.⁶
 - An ETS is effective until OSHA creates a standard through the rulemaking process, which they must do within 6 months of publishing the ETS.⁷ OSHA has issued a total of nine ETSs, six of which were challenged in court—four were overturned and one was partially vacated.⁸
 - On June 21, 2021, OSHA published an ETS for healthcare workplaces.⁹ It requires covered healthcare institutions to create a “COVID-19 plan” that explains protocols for keeping record of COVID-19 cases and policies for preventing spread of COVID-19, including physical distancing, ventilation, and personal protective equipment.¹⁰
 - On November 5, 2021, OSHA published an ETS for all employers with more than 100 employees.¹¹ The ETS requires these employers to implement mandatory COVID-19 vaccinations by January 4, 2022. The ETS outlines an option for regular testing and wearing a face covering instead of getting a vaccine. It also allows exceptions for medical reasons, for harms to sincerely held religious beliefs, for those who work exclusively outside, and for those who work exclusively at home.
 - The American Action Forum estimates this mandate will cost \$3 billion over six months.¹²
 - Many industries have expressed concern about the severe negative impacts that this ETS will cause. For example, many trucking companies, who are already spread thin due to driver shortages, will be forced to add this mandate to employees who often work alone. Also, in this industry, a testing option is effectively unavailable because of nature of their responsibilities.¹³

- Multiple lawsuits have been filed against OSHA’s most recent ETS challenging OSHA’s authority to issue a vaccine mandate.¹⁴ On November 6, 2021, the Fifth Circuit Court of Appeals placed a temporary hold on OSHA’s mandates due to “grave statutory and constitutional issues.”¹⁵ OSHA agreed to suspend implementation and enforcement of this ETS.¹⁶
- **OSHA has become all powerful over the American workforce without adding substantial value.**
 - The vaccine ETS unconstitutionally intrudes in the private contracts between employees and their employers. The vaccine mandate does not meet the conditions for promulgating an ETS because the mandate is not necessary to prevent employees from “grave danger.” In fact, over 66% of Americans have already received the vaccine against COVID-19.¹⁷ The vaccine ETS serves only to coerce those who have chosen not to receive the vaccine for various legitimate reasons.
 - Workplace fatalities, injuries, or illnesses have steadily decreased in the last 50 years, yet OSHA is not the major cause.¹⁸ This decrease began before OSHA and continues afterwards. Many factors have contributed to this decline including worker’s compensation insurance, the ability to sue for work-related injuries, and the market of employees who want safe work.¹⁹

POLICY SOLUTIONS

Congress should consider reforms that ensure safe work environments by giving authority back to the states and reigning in the power of OSHA.

- Congress may consider reversing OSHA’s vaccine ETS through the Congressional Review Act.²⁰
- Congress may consider eliminating OSHA’s authority to create emergency standards. OSHA has demonstrated that its ETS authority is primarily a means to make decisions for huge portions of the American workforce without consulting Americans. Congress created the ETS authority, and Congress can take it away.
- Congress may also give greater autonomy to the states regarding health and safety standards for their unique industries. The 10th amendment requires that all power not delegated to the federal government by the Constitution are reserved to the states or to the people, and this includes workplace safety standards.

Publ. November 16, 2021

¹ “About OSHA.” Occupational Safety and Health Administration. <https://www.osha.gov/aboutosha>

² Id.

³ 29 U.S. Code § 654 - Duties of employers and employees. <https://www.law.cornell.edu/uscode/text/29/654>

⁴ “OSHA Penalties.” Occupational Safety and Health Administration. <https://www.osha.gov/penalties>

⁵ Szymendera, Scott. “OSHA State Plans: In Brief, with Examples from California and Arizona.” Congressional Research Service. April 18, 2017 <https://www.crs.gov/Reports/R46288?source=search&guid=02e912dc1a524893978b5da9724b5efb&index=1#fn2>

⁶ 29 U.S. Code § 655 - Standards <https://www.law.cornell.edu/uscode/text/29/655>

⁷ Szymendera, Scott. “OSHA State Plans: In Brief, with Examples from California and Arizona.” Congressional Research Service. April 18, 2017 <https://www.crs.gov/Reports/R46288?source=search&guid=02e912dc1a524893978b5da9724b5efb&index=1#fn2>

⁸ Yoo, John. “Why Biden’s vaccine mandate fails the constitutional test.” American Enterprise Institute. September 23, 2021. <https://www.aei.org/op-eds/why-bidens-vaccine-mandate-fails-the-constitutional-test/>

⁹ “COVID-19 Healthcare ETS.” Occupational Health and Safety Administration. <https://www.osha.gov/coronavirus/ets>

¹⁰ Szymendera, Scott. “OSHA: COVID-19 ETS on Health Care Employment and Vaccinations and Testing for Large Employers.” Congressional Research Service. November 10, 2021.

<https://www.crs.gov/Reports/R46288?source=search&guid=02e912dc1a524893978b5da9724b5efb&index=1#fn21>

¹¹ “COVID-19 Vaccination and Testing; Emergency Temporary Standard.” Federal Register. November 5, 2021.

<https://www.federalregister.gov/documents/2021/11/05/2021-23643/covid-19-vaccination-and-testing-emergency-temporary-standard>

¹² Bosch, Dan and Golbeck, Dan. “The Costs of Biden Administration’s COVID-19 Mandate Rules.” American Action Forum. November 4, 2021. <https://www.americanactionforum.org/insight/the-costs-of-the-biden-administrations-covid-19-mandate-rules/>

-
- ¹³ Stinson, Jim. “OSHA vaccine mandate on hold, Labor Dept. hints a truck driver exemption.” *Transport Dive*. November 8, 2021. <https://www.transportdive.com/news/Biden-administration-vaccine-exemption-truck-drivers/609656/>
- ¹⁴ “Southern Baptist Theological Seminary v. OSHA.” Alliance Defending Freedom. November 5, 2021. <https://adfmedia.org/case/southern-baptist-theological-seminary-v-occupational-safety-and-health-administration>
- ¹⁵ “Fifth Circuit Temporarily Halts Enforcement of OSHA ETS Amidst a Flurry of Litigation.” JDSupra. November 8, 2021. <https://www.jdsupra.com/legalnews/fifth-circuit-temporarily-halts-2808147/>
- ¹⁶ “COVID-19 Vaccination and Testing ETS.” Occupational Safety and Health Administration. <https://www.osha.gov/coronavirus/ets2>
- ¹⁷ “Coronavirus Vaccinations.” Our World in Data. https://ourworldindata.org/covid-vaccinations?country=OWID_WRL (accessed November 5, 2021)
- ¹⁸ Hale, Nathan and Leeth, John. “Evaluating OSHA’s Effectiveness and Suggestions for Reform.” April 23, 2013. <https://www.mercatus.org/publications/regulation/evaluating-oshas-effectiveness-and-suggestions-reform>
- ¹⁹ *Id.*
- ²⁰ “Congressman Keller leads challenge to Biden’s vaccine mandate.” Congressman Fred Keller. November 3, 2021. <https://keller.house.gov/media/press-releases/congressmen-keller-leads-challenge-biden-s-vaccine-mandate>



PANDEMIC UNEMPLOYMENT ASSISTANCE FRAUD

The prevalence of unemployment fraud and overpayments during the pandemic has been widespread – from using the identities of the deceased to those who are incarcerated to higher-profile individuals such as the Governor of Arkansas.¹ In just one case, a Nigerian fraud ring known as “Scattered Canary” extracted hundreds of millions of dollars in unemployment insurance from at least 11 different states in 2020.² While the improper payment rate for the regular unemployment insurance (UI) program was already as high as 10 percent pre-pandemic, which would amount to \$89 billion over the past year, the U.S. Department of Labor (DOL) Office of the Inspector General’s initial audit suggests the improper payment rate, including fraudulent payments, during the pandemic was higher.³

BACKGROUND

- **The CARES Act temporarily expanded eligibility for unemployment benefits:**
 - While states have extensive flexibility in determining their regular unemployment insurance benefit levels, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law by President Trump on March 27, 2020, provided funding for states to expand UI to many workers who were impacted by COVID-19 but not normally eligible for unemployment benefits.⁴
 - Under the CARES Act, these workers who were not normally eligible for UI, such as self-employed workers, could apply for benefits through their state under the new federally-funded Pandemic Unemployment Assistance (PUA) program.⁵ The American Rescue Plan Act extended the availability of PUA through the week ending September 6, 2021.⁶
- **Unemployment claims and benefit payments reached record highs during the pandemic:**
 - As unemployment rose to the highest levels since the Great Depression and Congress expanded eligibility for unemployment benefits, the Treasury Department reported \$93.7 billion spent by the states and federal government on unemployment insurance in May of 2020 alone, compared to \$2.1 billion spent in the same month the year prior.⁷
 - \$130 billion was disbursed by the DOL for the PUA program specifically with hundreds of billions in federal dollars going to unemployment insurance broadly during the pandemic.⁸
- **With the expansion of eligibility and high unemployment rates, fraud and overpayments exploded:**
 - As unemployment claims and disbursements reached record highs during the pandemic with an unprecedented infusion of federal funds, fraud also exploded.⁹ According to the OIG, the PUA program is particularly susceptible to fraud due to claimants’ self-certification.¹⁰
 - Consequently, numerous states have partnered with cybersecurity firms such as ID.me to provide identity verification for the PUA program to reduce fraudulent claims.¹¹ According to ID.me, at least 30% and as many as 50% of the new claims under the PUA program were fraudulent, and they prevented over one million fraudulent claims.¹² In one example, Idaho’s Department of Labor reports that before it contracted with ID.me in December 2020, more than half of the initial claims filed were fraudulent.¹³
 - In addition, the DOL reported that states made over \$3.6 billion in PUA overpayments, which do not even include all fraudulent payments, between March 2020 and February 2021.¹⁴

POLICY SOLUTIONS

- The COVID-19 Relief and Fiscal 2021 Omnibus, which was signed by President Trump on December 27, 2020, included some helpful measures toward preventing fraud in the PUA program. It required that individuals provide documentation substantiating employment or self-employment within 21 days of being approved to receive PUA. Also, it required states to have procedures in place for identity verification or validation to administer the PUA program. Although an improvement, applicants should have provided this documentation prior to approval. Additionally, the DOL should have ensured that states were complying with all applicable PUA requirements to ensure PUA was going to those who are truly in need. As the Attorney General of Rhode Island, Peter Neronha, noted after a joint state-federal investigation uncovered a \$1.2 million fraud operation perpetrated by only four individuals, “When people collect benefits they aren’t entitled to, as is alleged here, they reduce the amount of benefits that are available to those who are eligible and who really need them.”¹⁵
- While these recently enacted prevention measures were desperately needed, Congress can do more about overpayments. The December 2020 COVID-19 Relief and Fiscal 2021 Omnibus allows states to waive the requirement to retrieve PUA overpayments when the individual is not at fault.¹⁶ Congress should consider amending this authority to ensure states proactively correct overpayment problems in their systems. Whether improperly paid funds are by retrieved from recipients or pulled from a state’s general tax revenue, states should be required to reimburse the federal government for overpayments. Whether by mistake or malicious intent, Congress should ensure valuable taxpayer dollars are not going to waste. In addition, the Government Accountability Office (GAO) also recommends that the DOL “collect data from states on the amount of overpayments waived in the PUA program,” as is done with regular UI.¹⁷
- To further limit improper payments, the Office of the Inspector General for the DOL recommended states cross match claims against the National Directory of New Hires and with the Social Security Administration prisoner database.¹⁸ In Pennsylvania, an investigation discovered that over 10,000 inmates in state facilities were found trying to apply for unemployment benefits, amounting to over \$100 million in fraud with nearly \$200 million in fraud once local prisons were added in.¹⁹ Also, states should be required to use the National Association of State Workforce Agencies’ Integrity Database Hub and the State Information Data Exchange System.²⁰
- States played a fundamental role in carrying out the PUA program and all UI programs. Therefore, states may choose to consider additional cross checks. Also, as some already have, states may work to build technology to check background identity including if the IP address is location in the state of the filed claim or if the same IP address was uses to file multiple claims in a short time period.²¹
- Since unemployment benefits are subject to income taxation, many victims of identity theft and fraud have been surprised to receive letters or 1099-G forms to pay taxes for benefits they never received.²² Considering the extraordinary level of fraud over the past year, Congress should do more to better protect these victims of identity theft to ensure they are not liable for penalties or interest to the Internal Revenue Service (IRS) for not reporting income from benefits that were never received.²³

¹ Geoff Mulvihill and Andrew Welsh-Huggins. Fraud overwhelms pandemic-related unemployment programs. AP News. March 1, 2021. <https://apnews.com/article/pandemics-health-coronavirus-pandemic-asia-pacific-ohio-b651def05a8a049637c4a1047f788631#:~:text=The%20Labor%20Department%20inspector%20general's,related%20unemployunem%20pro>

grams%20since%20March. and Andrew DeMillo. Arkansas governor, others targeted in unemployment fraud. August 4, 2021. <https://apnews.com/article/health-arkansas-pandemics-asa-hutchinson-virus-outbreak-9b9a84686d61e1822486e9b04423640d>

² Keshia Clukey. Covid-19 Scammers Driving Unemployment Fraud Across Nation. Bloomberg Law. October 19, 2020. <https://news.bloomberglaw.com/daily-labor-report/covid-19-scammers-driving-unemployment-fraud-across-nation>

³ DOL-OIG Oversight of The Unemployment Insurance Program. U.S. Department of Labor: Office of the Inspector General. March 31, 2021. <https://www.oig.dol.gov/doloiguoversightwork.htm>

⁴ Manuel Alcalá Kovalski and Louise Sheiner. How does unemployment insurance work? And how is it changing during the coronavirus pandemic? The Brookings Institution. July 20, 2020. <https://www.brookings.edu/blog/up-front/2020/07/20/how-does-unemployment-insurance-work-and-how-is-it-changing-during-the-coronavirus-pandemic/>

⁵ Unemployment Insurance Relief During COVID-19 Outbreak. U.S. Department of Labor. <https://www.dol.gov/coronavirus/unemployment-insurance>

⁶ Policy Basics: How Many Weeks of Unemployment Compensation Are Available? Center on Budget and Policy Priorities. May 10, 2021. <https://www.cbpp.org/research/economy/how-many-weeks-of-unemployment-compensation-are-available>

⁷ Daily Treasury Statement: Cash and debt operations of the United States Treasury. May 29, 2020. <https://fsapps.fiscal.treasury.gov/dts/files/20052900.pdf> and Daily Treasury Statement: Cash and debt operations of the United States Treasury. May 31, 2019. <https://fsapps.fiscal.treasury.gov/dts/files/19053100.pdf>

⁸ Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding to States. U.S. Department of Labor. November 27, 2021. https://oui.doleta.gov/unemploy/docs/cares_act_funding_state.html

⁹ DOL-OIG Oversight of The Unemployment Insurance Program. U.S. Department of Labor: Office of the Inspector General. March 31, 2021. <https://www.oig.dol.gov/doloiguoversightwork.htm>

¹⁰ *Id.*

¹¹ What is ID.me? ID.me. <https://help.id.me/hc/en-us/articles/201904874-What-is-ID-me->

¹² Lucas Manfredi. Pandemic unemployment benefits fraud could top \$200B, firm says. Fox Business. March 2021. <https://www.foxbusiness.com/economy/pandemic-unemployment-benefits-fraud-could-top-200b-firm-says> and Joe Bartels. Unemployed Nevadans grapple with more trouble: ID.me verification fights fraud impersonators. KTNV Las Vegas. May 6, 2021. <https://www.ktnv.com/13-investigates/unemployed-nevadans-grapple-with-more-troubles-id-me-verification-suffers-fraud-impersonators>

¹³ Idaho Department of Labor. ID.me helps stop unemployment insurance fraud. Argus Observer. April 11, 2021. https://www.argusobserver.com/independent/news/id-me-helps-stop-unemployment-insurance-fraud/article_f9c8c1c0-9989-11eb-849e-df108dbb5158.html

¹⁴ COVID-19:Sustained Federal Action Is Crucial as Pandemic Enters Its Second Year. U.S. Government Accountability Office. March 31, 2021. https://www.gao.gov/products/gao-21-387#summary_recommend

¹⁵ Joseph Horvath and Jonathan Bain. Top 10 Examples of Outrageous Unemployment Fraud in 2020-And How to Fix It. The Foundation for Government Accountability. January 13, 2021. <https://thefga.org/wp-content/uploads/2021/01/10-Examples-of-Unemployment-Fraud-1.pdf> and GoLocalProv News Team. Four Arrested, More Than \$1.2 Million Seized Tied to CARES Act Unemployment Fraud in RI. GoLocalProv News. October 14, 2020. <https://www.golocalprov.com/news/new-four-arrested-more-than-1.2-million-seized-tied-to-cares-act-unemploye>

¹⁶ John Pallasch. Unemployment Insurance Program Letter NO. 9-21. U.S. Department of Labor, Employment and Training Administration Advisory System. December 30, 2020. https://wdr.doleta.gov/directives/attach/UIPL/UIPL_9-21.pdf

¹⁷ COVID-19:Sustained Federal Action Is Crucial as Pandemic Enters Its Second Year. U.S. Government Accountability Office. March 31, 2021. https://www.gao.gov/products/gao-21-387#summary_recommend

¹⁸ DOL-OIG Oversight of The Unemployment Insurance Program. U.S. Department of Labor: Office of the Inspector General. March 31, 2021. <https://www.oig.dol.gov/doloiguoversightwork.htm>

¹⁹ Rick Earle. Investigators uncover scheme in which inmates received COVID-19 unemployment money. WXPI-TV. August 25, 2020. <https://www.wpxi.com/news/top-stories/investigators-uncover-scheme-which-inmates-received-covid-19-unemployment-money/IYOCVYZXVBB65C367UZSG4J6QE/>

²⁰ DOL-OIG Oversight of The Unemployment Insurance Program. March 31, 2021. U.S. Department of Labor: Office of the Inspector General. <https://www.oig.dol.gov/doloiguoversightwork.htm>

²¹ Sarah D. Wire. Criminals stole billions in COVID-19 unemployment benefits. A new relief bill won't prevent it from happening again. LA Times. March 2, 2021. <https://www.latimes.com/politics/story/2021-03-02/criminals-stole-billions-in-covid-19-unemployment-benefits-new-relief-bill-wont-stop-a-repeat>

²² Sarah Chaney Cambon and Richard Rubin. Victims of Unemployment-Benefit Fraud Face Tax-Season Surprise. Wall Street Journal. March 13, 2021. <https://www.wsj.com/articles/victims-of-unemployment-benefit-fraud-face-tax-season-surprise-11615631400?mod=e2tw>

²³ Wenstrup Leads Letter to Administration Asking for Relief for Taxpayers that Were Victims of Unemployment Fraud. U.S. Committee on Ways and Means. February 8, 2021. <https://gop-waysandmeans.house.gov/wenstrup-leads-letter-to-administration-asking-for-relief-for-taxpayers-that-were-victims-of-unemployment-fraud/>



BIDEN'S COVID-19 BORDER CRISIS

President Biden's failure to enforce federal law at the southern border has led to an historic humanitarian and public health crisis. While the Biden Administration maintains high standards for COVID-19 restrictions for American citizens, like threatening people to “[g]et vaccinated or continue to wear your mask” and keeping federal employees at maximum telework, they simultaneously threaten to risk importing new cases from undocumented immigrants into the U.S. by rolling back use of Title 42.¹ This title has protected Americans from new exposure of COVID throughout the pandemic.

Since President John Adams, public health service commissioners have taken various roles to protect American citizens from the serious threat of disease.² In 1893, Congress enacted Title 42, which expanded the authority of the President and the Surgeon General in cases of public health emergencies by allowing them to suspend immigration.³

- Under Title 42, the Department of Health and Human Services (HHS) and the Centers for Disease Control and Prevention (CDC) may prohibit entry into the United States from another country if there is a “serious danger of the introduction” of a communicable disease from the country of origin, in order to protect the “interest of the public health.”⁴
- On March 20, 2020, in response to the public health threat from COVID-19, HHS and the CDC announced a suspension of accepting immigrants arriving from Mexico and Canada under Title 42. The announcement cautioned that “The public health risks of inaction are stark.”⁵ Although President Biden has maintained Title 42 for adults, he has exempted families and children.⁶ From October 2020-May 2021, CBP has denied entry to 640,000 immigrants under Title 42 due to the risk of spreading COVID-19.⁷

While U.S. COVID-19 cases decrease and vaccination rates increase, COVID-19 remains a threat globally.

- Many immigrants arrive from Brazil, Guatemala, and Mexico, where COVID is rampant. From July 19- July 26, Guatemala had 109 infections per 100,000 people, Mexico had 70 infections per 100,000, and Brazil had 147 infections per 100,000.⁸ The U.S. also had 112 infections per 100,000.⁹
- The CDC maintains a level 3 “COVID-High” precaution for travel to Mexico.¹⁰ If Americans are warned against traveling to Mexico, then they should not be forced to admit illegal immigrants traveling from there.
- During the first week of July 2021, 26,000 migrants were detained at an Immigration and Customs Enforcement (ICE) facility for illegally crossing the border, among whom 7,500 new cases of COVID-19 have been reported, that is about 1 in every 3.5.¹¹
- The Biden Administration's lack of health and safety precautions, transit of detainees between facilities, and low vaccination rates among immigrants pose a danger for spread of COVID in the U.S.¹² Moreover, in March 2021, Customs and Border Patrol (CBP) admitted they were not testing migrant children held in crowded border facilities. These children reportedly remained untested until they were transported inside the U.S, with many testing positive for COVID after the transfer.¹³

As the pandemic continues globally, Congress should support border policies that protect the United States from the danger of spreading communicable diseases. For example, H.R. 471, the Protecting Americans from Unnecessary Spread upon Entry from COVID-19 (PAUSE) Act of 2021, would require Title 42 to remain in effect until all public and federal public health emergencies for COVID-19 end and the CDC health risk level for Canada and Mexico is reduced to level one.¹⁴

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- ¹ Kight, Stef. “Scoop: White House eyes ending migrant family expulsion by July 31.” Axios. June 20, 2021. <https://www.axios.com/scoop-white-house-eyes-ending-migrant-family-expulsion-b6d0a178-001e-41e8-9f5b-17cc7547cccc.html>
- ² “Our History” Commissioned Corps of the U.S. Public Health Service. <https://www.usphs.gov/history>
- ³ “Scope of CDC Authority Under Section 361 of the Public Health Service Act (PHSA).” Congressional Research Service. April 13, 2021. <https://crsreports.congress.gov/product/pdf/R/R46758>
- ⁴ U.S. Code. 42 USC 265 <https://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title42-section265&num=0&saved=%7CKHRpdGxIOjQyIHNIY3Rpb246MjY0IGVkaXRpb246cHJlbGltKQ%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim> and “Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions.” U.S. Customs and Border Protection. <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>
- ⁵ “Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists.” U.S. Department of Health and Human Services Centers for Disease Control and Prevention. March 20, 2020. https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf
- ⁶ Melchior, Jillian. “Biden’s Border Crisis, Up Close.” Wall Street Journal. March 29, 2021. https://www.wsj.com/articles/bidens-border-crisis-up-close-11617057522?mod=hp_opin_pos_1
- ⁷ “Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions.” U.S. Customs and Border Protection. <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics>
- ⁸ “Guatemala.” Reuters Covid-19 Tracker. Accessed July 26, 2021. <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/guatemala/> and “Mexico.” Reuters Covid-19 Tracker. Accessed July 26, 2021. <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/mexico/> and “Brazil.” Reuters Covid-19 Tracker. Accessed July 26, 2021. <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/brazil/>
- ⁹ “United States.” Reuters Covid-19 Tracker. Accessed July 26, 2021. <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/united-states/>
- ¹⁰ “Mexico.” CDC Travel Information. June 7, 2021. <https://wwwnc.cdc.gov/travel/destinations/traveler/none/mexico>
- ¹¹ Maura Turcotte. “Virus cases are surging at crowded immigration detention centers in the U.S.” New York Times. July 6, 2021. <https://www.nytimes.com/2021/07/06/us/covid-immigration-detention.html>
- ¹² Id.
- ¹³ Ainsley, Julia, Gutierrez, Gabe, and Soboroff, Jacob. “CBP not testing migrant children for Covid at border stations, though many test positive after transfer.” NBC News. March 25, 2021. <https://www.nbcnews.com/politics/immigration/cbp-not-testing-migrant-children-covid-border-stations-though-many-n1262059> and Robles, Frances and Jordan, Miriam. “Covid on the Border: Migrants Aren’t Tested on Arrival in U.S.” The New York Times. April 28, 2021. <https://www.nytimes.com/2021/04/28/us/coronavirus-migrants-testing.html>
- ¹⁴ H.R. 471- Pause Act of 2021. Congress.gov. <https://www.congress.gov/bill/117th-congress/house-bill/471> and “Herrell Act of Stop the Spread of COVID-19 at the Border.” Congresswoman Yvette Herrell. January 26, 2021. <https://herrell.house.gov/media/press-releases/herrell-acts-stop-spread-covid-19-border>



BIDEN TAKING CREDIT FOR COVID VACCINES

Some things in Washington never change, like President Joe Biden trying to take credit for someone else's work. Despite claiming in late 2020 that, "there's no prospect that there's going to be a vaccine available for the majority of the American people before the middle of next year," the Biden Administration is now trying to claim all the credit for the U.S. vaccine rollout.¹

President Biden and his Administration claim they did not have the vaccine when they came into office and that they were "starting from scratch," but here are the facts:²

- Despite all the criticism and doubts, Operation Warp Speed (OWS) has been a resounding success. The U.S. was able to approve and distribute the vaccines developed by Pfizer and Moderna before the end of 2020.
- The Trump Administration contracted for enough doses to vaccinate 400 million people – more than enough for the entire U.S. population.³ Some of President Biden's recent purchases simply exercised options already written into the Trump Administration's Operation Warp Speed contracts.⁴
- President Biden's "big goal" of vaccinating 100 million people during his first 100 days in office would have required the U.S. to slow down the pace of vaccinations because Operation Warp Speed was already vaccinating people at a higher rate.⁵
- During President Trump's last week in office, which included a federal holiday (MLK day), the U.S. averaged 983,000 doses a day.⁶
- On President Trump's last day in office the U.S. vaccinated 1.6 million people. That exceeded the one million doses per day goal of the Biden Administration by 600,000 doses.
- Even Dr. Anthony Fauci, no friend of the previous Administration, has pushed back against the Biden Administration saying, "We're certainly not starting from scratch."⁷

President Biden and his allies have contributed one thing to the vaccine rollout – doubt. A recent *Wall Street Journal* article highlighted the numerous statements from President Biden and his Democrat allies that undermined public confidence in the vaccine.⁸ President Biden asked in September, "who's going to take the shot...you going to be the first one to say 'put me, sign me up, they now say it's OK...I'm not being facetious.'"⁹ It should not be surprising then that a new study shows that 47% of Americans are hesitant to get the vaccine.¹⁰ Instead of trying to demonize the previous Administration and take credit for their successes, the Biden Administration and the Democrats should thank them for the achievements of Operation Warp Speed and focus on continuing the great work they started.

¹ O’Kane, Caitlin. “‘We’re about to go into a dark winter’: Biden says Trump has no plan for coronavirus”. *CBS News*. October 23, 2020. <https://www.cbsnews.com/news/biden-trump-coronavirus-plan-vaccine-winter/>.

² Kessler, Glenn. “Harris’s claim that Biden vaccine plan was ‘starting from scratch’”. *Washington Post*. February 17, 2021. <https://www.washingtonpost.com/politics/2021/02/17/harris-claim-biden-vaccine-plan-was-starting-scratch/>. and

Conklin, Audrey. “Biden mocked for claim that ‘we didn’t have’ COVID-19 vaccine when he took office”. *Fox News*. February 17, 2021. <https://www.foxnews.com/politics/biden-claim-covid-19-vaccine>.

³ Knight, Victoria. “Biden’s Criticism of Trump Team’s Vaccine Contracts Is a Stretch”. *Kaiser Health News*. March 8, 2021.

<https://khn.org/news/article/fact-check-president-joe-biden-criticism-of-trump-administration-vaccine-contracts-and-supply-not-accurate/>.

⁴ Boston Herald Editorial Staff. “Team Biden downplays Trump’s vaccine success”. *Boston Herald*. March 8, 2021.

<https://www.bostonherald.com/2021/03/08/team-biden-downplays-trumps-vaccine-success/>.

⁵ Saavedra, Ryan. “Former Top Coronavirus Task Force Official Blasts Biden: We’d Have To ‘Slow Down’ To Meet His Goal”. *The Daily Wire*. February 28, 2021. <https://www.dailywire.com/news/former-top-coronavirus-task-force-official-blasts-biden-wed-have-to-slow-down-to-meet-his-goal>.

⁶ Randall, Tom and Armstrong, Drew. “Biden’s 100-Day Vaccine Goal Was Nearly Met Before He Arrived”. *Bloomberg*. January 22, 2021. <https://www.bloomberg.com/news/articles/2021-01-22/biden-s-million-dose-a-day-goal-sets-a-bar-that-s-nearly-met>

⁷ Weixel, Nathaniel. “Fauci: We are not ‘starting from scratch’ on vaccine distribution”. *The Hill*. January 21, 2021.

<https://thehill.com/policy/healthcare/535327-fauci-we-are-not-starting-from-scratch-on-vaccine-distribution>.

⁸ Zinberg, Joel. “Biden and Allies Stoked Vaccine Fears”. *The Wall Street Journal*. February 25, 2021. <https://www.wsj.com/articles/biden-and-allies-stoked-vaccine-fears-11614295867>.

⁹ Haworth, Ian. “Here Are 6 ‘Pro-Science’ Democrats Who Pushed Anti-Vaccine Propaganda”. *The Daily Wire*. December 15, 2020. <https://www.dailywire.com/news/here-are-6-pro-science-democrats-who-pushed-anti-vaccine-propaganda>.

¹⁰ Dutton, Gail. “47% of Americans Still Hesitant to Get COVID-19 Vaccine, New Poll Says”. *BioSpace*. January 22, 2021. <https://www.biospace.com/article/47-percent-of-americans-still-hesitant-to-get-covid-19-vaccine-new-poll-says/>



HOLD CHINA ACCOUNTABLE FOR COVID-19

As the United States continues to face the devastation caused by the novel coronavirus pandemic (COVID-19), Congress and the executive branch must act to hold China accountable for its failures and deceptions related to transmission of the disease.

BACKGROUND

In late 2019, a novel coronavirus began significant human-to-human transmission in Wuhan, China.¹ Unfortunately, its origin theory has proven elusive.² Regardless, the Chinese government encountered viral clusters emerging in Wuhan before other governments, and possessed the best opportunity to respond, develop mitigation strategies, and coordinate with nations around the globe.

Rather than immediately alerting other nations to the gravity of the virus, Chinese officials were not forthcoming, ran narratives directly counter to medical evidence, and continued to allow travel outside of the country without necessary safeguards.³ China further attempted to avoid accountability by spreading propaganda that COVID-19 originated from the U.S. military.⁴

While virtually every nation has been caught off-guard by this coronavirus, China's failure to communicate honestly and take appropriate measures has directly led to significant health and economic damages to the United States.

Chinese government-run press suggested that China might retaliate against adverse U.S. policies, such as travel bans, by cutting off medical products and prohibiting exports to the United States.⁵ Unfortunately, the U.S. economy is so reliant on Chinese manufacturing that the threats carry significant weight. Of equal concern is the flood of lethal fentanyl that has entered the U.S. from China as trade relations have liberalized over the last few decades.⁶ According to Customs and Border Patrol testimony, about 80 percent of fentanyl seized in FY2017 originated from China by international mail.⁷

China is one of the 196 countries legally-bound by the second edition of the World Health Organization's 2005 International Health Regulations.⁸ As such, China has a duty to rapidly and clearly communicate with other nations about conditions that may constitute a potential public health emergency.⁹ More importantly, China is also expected to work in a collaborative nature with other states in a very short time window.¹⁰

In 2001, the United Nations (UN) adopted a resolution noting the International Law Commission's (ILC) draft text on the responsibility of states for internationally wrongful acts.¹¹ While the UN has not formally considered a resolution regarding the ILC's recommendations, "they have been very widely approved and applied in practice, including by the International Court of Justice (ICJ)."¹²

The UN Charter permits states to bring disputes before the ICT or other international tribunals.¹³ The U.S. is also a member of the Permanent Court of Arbitration at The Hague which was "established in 1899 to facilitate arbitration and other forms of dispute resolution between the states."¹⁴

Due to the principle of state sovereignty, China may not be forced to appear before these international bodies without their consent.

Domestically, the Foreign Sovereign Immunities Act¹⁵ governs lawsuits against foreign states such as China related to the harms they cause. While there are a few exceptions ranging from economic activity to state sponsors of terrorism, there is currently no exception permitting lawsuits for negligent or intentional conduct of public officials related to a public health crisis.

POLICY SOLUTIONS

The United States has several options to hold China accountable for direct actions resulting in health and economic harms to the United States. Because China will not likely consent to a normal judicial or dispute resolution process, the U.S. must independently ensure that its policy responses are proportional to actual harm caused. Congress may:

- **Redirect America's Supply Chain Away from China** – The U.S. must strengthen its international alliances and diversify its global supply chain to reduce economic dependency on China. Congress should strengthen multilateral alliances with international partners, particularly with Pacific regional allies, as well as close geographical allies in Central and South America, by reducing and harmonizing trade barriers.¹⁶
- **Pursue Relief Before International Tribunals** – The U.S. should consider international remedies up to and including action at the ICJ. China is unlikely to consent to such resolutions and will be even less likely to transparently allow independent discovery or investigations into their handling of the COVID-19.
- **Apply Diplomatic Pressure for China to Take Responsibility** – As China fails to take accountability for the damage that its authoritarian regime has caused, the U.S. should consider efforts to remove China from leadership positions at the UN and examine China's role at the World Health Organization.
- **Combat China's Internet Firewall** – If China refuses to be transparent about public health issues through official government channels, Congress should evaluate measures to thwart China's efforts to keep its information systems sealed from the rest of the world.¹⁷
- **Restrict Travel and Trade** – To avoid further health crises, Congress should consider appropriate travel restrictions, health screenings and trade limitations until China agrees to honor its international health obligations.

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¹ Graham Readfearn, *How did coronavirus start and where did it come from? Was it really Wuhan's animal market?* The Guardian (Apr. 27, 2020) <https://www.theguardian.com/world/2020/apr/08/how-did-coronavirus-start-and-where-did-it-come-from-was-it-really-wuhans-animal-market>.

² Andersen, K.G., Rambaut, A., Lipkin, W.I. *et al.* The proximal origin of SARS-CoV-2. *Nat Med* 26, 450–452 (2020). <https://doi.org/10.1038/s41591-020-0820-9>.

³ Jim Geraghty, *The Comprehensive Timeline of China's COVID-19 Lies*, National Review (Mar. 23, 2020) <https://www.nationalreview.com/the-morning-jolt/chinas-devastating-lies/>.

⁴ Steven Lee Myers, New York Times, *China Spins Tale that the U.S. Army Started the Coronavirus Epidemic*, Mar. 13, 2020, <https://www.nytimes.com/2020/03/13/world/asia/coronavirus-china-conspiracy-theory.html>

⁵ 理直气壮, 世界应该感谢中国, Xinhua (Mar. 4, 2020) http://www.xinhuanet.com/2020-03/04/c_1125660473.htm.

⁶ Adriana Belmonte, *How China flooded the U.S. with lethal fentanyl, fueling the opioid crisis*, Yahoo Finance (Feb. 15, 2020) <https://finance.yahoo.com/news/chinas-role-in-the-us-fentanyl-epidemic-152338423.html>.

⁷ U.S. Senate, 2018; T. Owen, Executive Assistant Commissioner for Office of Field Operations, U.S. Customs and Border Protection, testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, January 25, 2018.

⁸ World Health Organization. (2008). *International Health Regulations (2005) Second Edition*. Geneva: World Health Organization, <https://www.who.int/ihr/publications/9789241596664/en/>.

⁹ *Id.* at art. 6.

¹⁰ *Id.* at art. 10.

¹¹ G.A. Res. 56/83, U.N. Doc. A/RES/56/83 (Jan. 28, 2002) https://www.un.org/ga/search/view_doc.asp?symbol=A/res/56/83.¹² James Crawford, Articles on Responsibility of States for Internationally Wrongful Acts, Office of Legal Affairs, United Nations, (2001) <https://legal.un.org/avl/ha/rsiwa/rsiwa.html>.

¹² James Crawford, Articles on Responsibility of States for Internationally Wrongful Acts, Office of Legal Affairs, United Nations, (2001) <https://legal.un.org/avl/ha/rsiwa/rsiwa.html>.

¹³ U.N. Charter ch. XIV, art. 92-96. <https://www.un.org/en/sections/un-charter/chapter-xiv/index.html>

¹⁴ About us, Permanent Court of Arbitration (2020) <https://pca-cpa.org/en/about/>.

¹⁵ 28 U.S.C. 1602-1611 (2020).

¹⁶ Collectively, the U.S., Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam represent about 40 percent of the world's GDP, as a start. The Republican Policy Committee has issued previous policy guides on trade with China: *See* guides entitled *Reroute China Supply Chain Dependency* and, *Respond to Chinese Trade Practices*.

¹⁷ *See, Reject Authoritarian Internet Control*, House Republican Policy Committee (Mar. 2020), <https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/28%20-%20Reject%20Authoritarian%20Internet%20Control.pdf>.

CHINA'S COVID-19 COVER-UP PLAYBOOK

In late 2019, a novel coronavirus, commonly referred to as COVID-19, began significant human-to-human transmission. COVID-19 reportedly originated in Wuhan, China, although the precise nature of its origin is still under review.¹

As the virus spread beyond its borders, the Chinese Communist Party (CCP) suppressed crucial information, including information about human-to-human transfer, necessary to curb worldwide transmission. As of November 2021, the virus has spread to nearly every country and resulted in more than 254 million confirmed cases and at least 5 million COVID-19 related deaths.²

The House Foreign Affairs Committee (HFAC) Republicans released a report examining the CCP's cover-up of the virus in September 2020. The report concluded "...it is clear CCP health officials and senior leadership had the information required, at a date early enough, to reduce China's COVID-19 cases by at least 86% compared to the estimated caseload at the end of February."³

The CCP's COVID-19 cover-up very closely echoes the strategy undertaken 17 years ago during the 2003 SARS outbreak. SARS "spread to 28 countries outside of [China], resulting in more than 8,000 cases and 774 known deaths."⁴ The China Task Force identified eight behaviors that the CCP engaged in to conceal the SARS and COVID-19 pandemics, as shown in the table below:

CCP Actions	SARS	COVID-19
Waited to inform the WHO?	✓	✓
Subsequently hid information from the WHO?	✓	✓
Hid their knowledge of the severity of the outbreak?	✓	✓
Disrupted press from reporting?	✓	✓
Response kept secret until after the Spring Festival travel season began?	✓	✓
Limited access of outside experts to epicenter of the outbreak?	✓	✓
Claimed the virus was under control?	✓	✓
Underreported number of cases?	✓	✓

China Task Force Report, June 2020⁵

Furthermore, HFAC Republicans found that the CCP "failed to heed" the lessons of the "International Health Regulations (IHR) that govern how countries are required to handle public health emergencies."⁶ Despite clear violations of international law and regulations referenced in the report, the World Health Organization (WHO) continues to defend the CCP's handling of COVID-19.

The CCP has a long history of concealing serious information to the detriment of every other country. Until they are held to the standards created because of their past cover-ups, they are destined to continue this deception.

¹ Graham Readfearn, *How did coronavirus start and where did it come from? Was it really Wuhan's animal market?* The Guardian (Apr. 27, 2020) <https://www.theguardian.com/world/2020/apr/08/how-did-coronavirus-start-and-where-did-it-come-from-was-it-really-wuhans-animal-market> and Andersen, K.G., Rambaut, A., Lipkin, W.I. *et al.* The proximal origin of SARS-CoV-2. *Nat Med* 26, 450–452 (2020). <https://doi.org/10.1038/s41591-020-0820-9>.

² The New York Times. “Coronavirus World Map: Tracking the Global Outbreak.” *The New York Times*, 18 Jan 2021, <https://www.nytimes.com/interactive/2021/world/covid-cases.html>.

³ *The Origins of the COVID-19 Global Pandemic, Including the Roles of the Chinese Communist Party and the World Health Organization*, House Foreign Affairs Committee Minority Report, U.S. House of Representatives (September 21, 2020), at <https://gop-foreignaffairs.house.gov/wp-content/uploads/2020/09/Final-Minority-Report-on-the-Origins-of-the-COVID-19-Global-Pandemic-Including-the-Roles-of-the-CCP-and-WHO-9.20.20-Coverpage.pdf>

⁴ Pasley, James. “How SARS Terrified the World in 2003, Infecting More than 8,000 People and Killing 774.” *Business Insider*, 20 Feb. 2020, www.businessinsider.com/deadly-sars-virus-history-2003-in-photos-2020-2.

⁵ China Task Force Report, *Supra*, at 3.

⁶ *Id.*



POLICIES THAT LED TO THE BIDEN BORDER CRISIS

The Trump Administration implemented numerous immigration policies to secure the border and keep Americans safe. The Biden Administration's dismantling of these policies, lack of enforcement, and open border rhetoric has led to a humanitarian crisis at the southern border. The unprecedented number of illegal immigrants attempting to cross the border will not end unless the Biden Administration works to reverse its actions and change its rhetoric.

- Homeland Security Secretary Alejandro Mayorkas stated, "We are on pace to encounter more individuals on the southwest border than we have in the last 20 years."¹ In March 2021, more than 172,000 immigrants illegally crossed the southwest border, including 18,890 unaccompanied children—a 100 percent increase over February. Unlike the 2014 and 2019 immigration surges of families, in 2021, 82 percent of the illegal crossings are single adults, many in search of work.²
- The flood of immigrants distracts border agents from their national security mission as they provide child-care to thousands of immigrants.³ Meanwhile, drug smugglers have not taken a holiday. In March, border agents were also responsible for seizing over 54,000 pounds of illegal drugs, include 653 pounds of fentanyl—enough to give a lethal dose to 147 million Americans.⁴ Further, cartels are expanding their business model and robbing immigrants of over \$14 million per day for smuggling families, minors, and individuals to the border.⁵

The crisis at the border is largely due to the dismantling of four important policies used by the Trump Administration. These policies must immediately be reinstated to alleviate this crisis.

5 Border Policies that the Biden Administration Has Dismantled:

1. Constructing a Border Wall:

- Proper border security is essential to maintaining a legal and orderly system of immigration.⁶ The Trump Administration finished over 452 miles of physical barriers, access roads, lighting, and advanced technologies to secure the Southern border.⁷ However, on January 20, 2021, President Biden signed an executive order ending the emergency declaration at the southern border and halting construction of the border wall.⁸
- By halting border wall construction, President Biden communicated that enforcing immigration law and enhancing national security at the border are meaningless to his administration.

2. Enforcing Title 42 during a pandemic:

- The Department of Health and Human Services has the authority through Title 42 of federal law to require a medical examination, including a negative COVID-19 test, for all migrants before being admitted in the United States.⁹ The Trump Administration used this title during the COVID-19 pandemic to limit the spread of the virus at the border and among immigrants.
- The Biden Administration, on the other hand, exempted unaccompanied children from this provision.¹⁰ This change has become a green light for minors crossing the border. In fact, children are unable to take any health precautions in their overcrowded holding facilities. For example, on March 23, 2021, in Donna, Texas, 400 children were held in pods made for 250 children.¹¹

3. **Using Migrant Protection Protocols (MPPs):**

- MPPs were enacted in 2019 to allow certain individuals seeking asylum to wait in Mexico for their immigration proceedings rather than granting free entry into the United States. On January 20, 2021, the Department of Homeland Security (DHS) suspended new enrollment in MPP.¹²
- By ending this policy, the Biden Administration loosened limits on the coyotes' smuggling business and encouraged Central American asylum-seekers to come illegally and dangerously before applying for asylum.¹³ Team Brownsville, a volunteer group that helps migrants seeking asylum, describes how this policy is negatively affecting children and parents: Because asylum-seekers may enter and stay, mothers and children are encouraged to make the treacherous journey to the border and then face the trauma of sending their children on with only a hope of reuniting.¹⁴ Republicans, on the other hand, support creating safe and lawful opportunities for families to seek asylum, including MPPs.

4. **Upholding Asylum Cooperative Agreements (ACAs):**

- ACAs were formed in 2019 between United States and El Salvador, Honduras, and Guatemala in order to expand asylum capabilities. Under ACAs, the U.S. partners with another country to offer humanitarian aid to asylum-seekers. These agreements allow DHS to use every tool available to provide timely humanitarian aid by sharing the load of asylum-seekers.
- On February 6, 2021, the Department of State cancelled all ACAs. In this move the Biden Administration eliminated an essential tool for aiding asylees and disrupted relationships with countries in the Northern Triangle. Republicans are prepared to use every tool available to help asylees, including ACAs.

5. **Deterring Illegal Border Crossings:**

- The Trump Administration used policies prohibiting illegal border crossing and a clear message condemning illegal immigration in order to discourage illegal immigrants from making the dangerous journey to the border. He implemented the "Safe Third Country" rule which encouraged immigrants to apply for asylum in the first safe country they arrived in, rather than trekking through multiple countries to the United States.¹⁵
- However, the Biden Administration has reversed this message. The Biden Administration set the stage for amnesty on his first day in office. On January 20, 2021, President Biden sent a bill to Congress, the U.S. Citizenship Act of 2021. This bill would give amnesty to millions of immigrants regardless of if they came legally. It would also give permanent work authorization to minors of H-1B visa holders and remove the requirement for immigrants to claim asylum within one year of arrival in the United States.¹⁶ By proposing this bill, President Biden promised illegal immigrants that they would become a citizen for free if they can get into the United States.

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¹ "Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border." U.S. Department of Homeland Security. March 16, 2021. <https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation>

² Juan Montes and Alicia A. Caldwell. "Men Looking for Work Drive Surge in Illegal Crossings at the U.S. Border." *Wall Street Journal*. March 24, 2021 https://www.wsj.com/articles/men-looking-for-work-drive-migrant-surge-at-the-u-s-border-11616624482?st=cmgrtz4z4yhm40w&reflink=article_email_share

³ Paul Bedard "Photos: Agents pulled from border to feed, diaper illegal immigrants." *Washington Examiner*. March 23, 2021. <https://www.washingtonexaminer.com/washington-secrets/photos-agents-pulled-from-border-to-feed-diaper-illegal-immigrants>

⁴ "Drug Seizure Statistics." U.S. Customs and Border Protection. <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics> and calculated by RPC staff using <https://oxfordtreatment.com/substance-abuse/fentanyl/lethal-dose/>

⁵ William La Jeunesse. "US-Mexico border traffickers earned as much as \$14M a day last month: sources" *Fox News*. March 22, 2021. <https://www.foxnews.com/politics/us-mexico-border-traffickers-million-february>

⁶ "Securing America's Southwest Border." Republican Policy Committee. <https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/15%20-%20Secure%20America%27s%20Southwest%20Border.pdf>

-
- ⁷ “Biden Administration’s Border Catastrophe—A Policy Tracker.” *Heritage Foundation*. March 15, 2021. <https://www.heritage.org/data-visualizations/immigration/biden-administrations-border-catastrophe-a-policy-tracker/?www>
- ⁸ “Proclamation on the Termination Of Emergency With Respect To The Southern Border Of The United States And Redirection Of Funds Diverted To Border Wall Construction.” White House. January 20, 2021. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>
- ⁹ “Laws and Regulations for the Medical Examination of Aliens.” Centers for Disease Control and Prevention. <https://www.cdc.gov/immigrantrefugeehealth/laws-regulations.html>
- ¹⁰ Jillian Kay Melchior. “Biden’s Border Crisis, Up Close.” *Wall Street Journal*. March 29, 2021. https://www.wsj.com/articles/bidens-border-crisis-up-close-11617057522?mod=hp_opin_pos_1
- ¹¹ Scott Neuman. “CBP Defends Conditions At Border Detention Centers Amid Upsurge In Migrants.” *National Public Radio*. March 23, 2021. <https://www.npr.org/2021/03/23/980290448/cbp-defends-conditions-at-border-detention-centers-amid-upsurge-in-migrants>
- ¹² “Migrant Protection Protocols.” U.S. Department of Homeland Security. <https://www.dhs.gov/migrant-protection-protocols>
- ¹³ Michael Barone. “Biden’s Open Border Immigration Policy--Why?” American Enterprise Institute. March 11, 2021. <https://www.aei.org/op-eds/bidens-open-borders-immigration-policy-why/>
- ¹⁴ Jillian Kay Melchior. “Biden’s Border Crisis, Up Close.” *Wall Street Journal*. March 29, 2021. https://www.wsj.com/articles/bidens-border-crisis-up-close-11617057522?mod=hp_opin_pos_1
- ¹⁵ Ries, Lora. “President Trump and Joe Biden: Comparing Immigration Policies.” *Heritage Foundation*. <https://www.heritage.org/immigration/report/president-trump-and-joe-biden-comparing-immigration-policies>
- ¹⁶ “Fact Sheet: President Biden Sends Immigration Bill to Congress as Part of His commitment to Modernize our Immigration System.” White House. January 20, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-president-biden-sends-immigration-bill-to-congress-as-part-of-his-commitment-to-modernize-our-immigration-system/>

CHINA: USING THE BORDER CRISIS AS A FENTANYL PIPELINE

Fentanyl is streaming from China, across our border, and killing thousands of Americans. In 2020, over 93,000 Americans died of drug overdose, including more than 57,000 from fentanyl.¹ Fentanyl and its chemical precursors are primarily sourced and trafficked from China to the United States across the southwest border, according to the U.S. Customs and Border Patrol (CBP) and the Drug Enforcement Agency (DEA).²

BACKGROUND

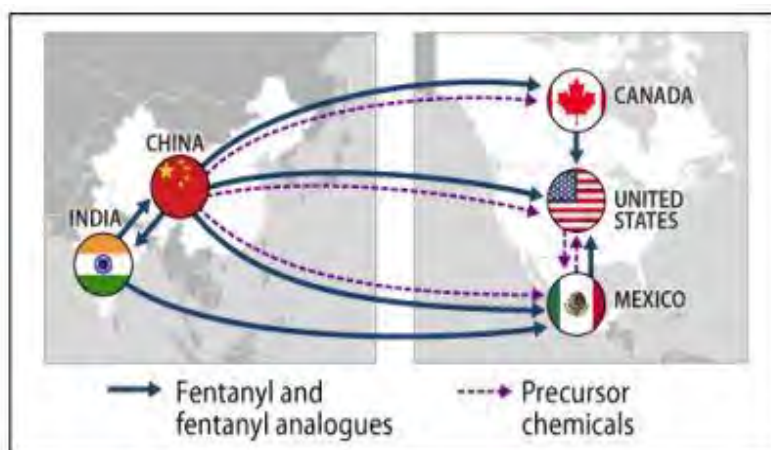
Fentanyl is 80-100 times stronger than morphine.³ It has been used as both a painkiller and anesthetic and is considered a high risk for abuse and addiction. Widespread abuse and overdose of fentanyl is recognized as an international problem.⁴ The figure to the right compares the size of the U.S. penny to 2 milligrams of fentanyl, the amount the DEA states can cause a lethal overdose.⁵ In the first eight months of fiscal year (FY) 2021 alone, CBP seized 7,450 pounds of fentanyl, a historic rate that is nearly as much as was seized in all of FYs 2018 and 2019.⁶ This amounts to enough fentanyl to cause 1,689,630,200 deaths, or more than 5 times the U.S. population.⁷



Source: GAO adaptation of U.S. Drug Enforcement Administration information. | GAO-21-499

Generally, fentanyl found in the U.S. is directly sourced from personal purchase from China or smuggled across the border by Mexican Transcontinental Criminal Organizations (TCOs) and other criminal networks.⁸ According to the DEA's 2020 National Drug Threat Assessment, supply of fentanyl directly from China has decreased, while Mexican TCO's contribution to fentanyl in the U.S. has increased since 2019. The majority of all fentanyl in the U.S. is now smuggled across the southwest border.⁹ In fact, there was a 62% increase in fentanyl seized at the border from 2018-19.¹⁰

Although fentanyl directly from China has decreased, fentanyl trafficked by Mexican TCOs across the southwest border still originates from China, who is a major source of chemical precursors, drug-related manufacturing equipment, and other related supplies.¹¹ As the figure to the right shows, China is the primary source of fentanyl trafficked through international mail and the main source for fentanyl-related supplies trafficked into the U.S.¹²



Source: DEA (2020).

Congress and the Trump Administration took critical first steps to reduce the harmful impact of China's fentanyl trafficking:

- Under pressure from the U.S., in May 2019, Chinese officials agreed to designate and control fentanyl as a class of drugs. This new control includes investigating fentanyl manufacturers, implementing stricter controls on internet advertisements for fentanyl, and enforcing shipping regulations.¹³ According to the State Department's 2020 International Narcotics Control Strategy Report, because of U.S. pressure, fentanyl directly shipped from China to the U.S. has fallen from 116 kilograms in FY 2017 to less than 200 grams in FY 2019.¹⁴ While direct shipments have decreased, the amount of fentanyl entering the U.S. has increased as Chinese producers have turned to shipping supplies to Mexican TCOs.
- In November 2019 the U.S. partnered with Chinese officials for a joint investigation of fentanyl traffickers which resulted in nine traffickers sentenced for trafficking fentanyl to the U.S. The U.S. has also worked with China for intelligence sharing operations regarding fentanyl flows that has aided the U.S. in targeting high-risk shipments.¹⁵
- The Department of Justice and the Treasury Department have increased pressure on China by designating Chinese nationals who lead fentanyl trafficking as "Consolidated Priority Organization Targets."¹⁶
- Congress enacted the Fentanyl Sanctions Act in 2020. The law enhances the president's authority to sanction synthetic opioid traffickers from China. It also authorized a 13-member Commission on Combating Synthetic Opioid Trafficking, which is charged with developing strategies to stop the flow of synthetic opioids into the U.S.¹⁷
- President Trump signed the Synthetics Trafficking and Overdose Prevention (STOP) Act into law in 2018. The law requires CBP to create a rule that instructs U.S. Postal Service to refuse any inbound international packages without advance electronic data.¹⁸ On March 15, 2021, CBP finalized a rule implementing the bill.¹⁹

POLICY SOLUTIONS

In addition to this progress, more has to be done. To halt imports of deadly fentanyl from China, Congress should enforce border security protections to guard against opportunity for increased drug flow.²⁰ DEA officials anticipate that Mexican TCOs will continue to obtain supplies from China and have an increased impact on the fentanyl market, so Congress should work now to address the crisis at the border and implement enhanced security measures to stop fentanyl from killing more Americans.²¹ Further, the U.S. should continue to pressure China to shut down production and shipment of drug supplies to Mexican TCOs.

Publ. July 21, 2021

¹ "Provisional Drug Overdose Death Counts." Centers for Disease Control and Prevention. <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> and McKay, Betsy. "U.S. Drug-Overdose Deaths Soared Nearly 30% in 2020, Driven by Synthetic Opioids." Wall Street Journal. July 14, 2021. <https://www.wsj.com/articles/u-s-drug-overdose-deaths-soared-nearly-30-in-2020-11626271200>

² Rosen, Liana W., & Lawrence, Susan V. "Illicit Fentanyl and China's Role." Congressional Research Service. January 29, 2021. <https://fas.org/sgp/crs/row/IF10890.pdf>

³ "Fentanyl." United States Drug Enforcement Administration. <https://www.dea.gov/factsheets/fentanyl>

⁴ Rosen, Liana W., & Lawrence, Susan V. "Illicit Fentanyl and China's Role." Congressional Research Service. January 29, 2021. <https://fas.org/sgp/crs/row/IF10890.pdf>

⁵ "Synthetic Opioids: Considerations for the Class-Wide Scheduling of Fentanyl-Related Substances." U.S. Government Accountability Office. April 12, 2021. <https://www.gao.gov/products/gao-21-499>

⁶ "Drug Seizure Statistics." U.S. Customs and Border Protection. June 9, 2021. <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>

⁷ <https://www.census.gov/quickfacts/fact/table/US/PST045219> and Calculated by RPC staff: 453,592 (mg in a lb) x 7,450 lbs = 3,379,260,400 / 2 mg (lethal dose)

⁸ “Advisory to Financial Institutions on Illicit Financial Schemes and Methods Relating to the Trafficking of Fentanyl and Other Synthetic Opioids.” U.S. Treasury Financial Crimes Enforcement Network. August 21, 2019. <https://www.fincen.gov/sites/default/files/advisory/2019-08-21/Fentanyl%20Advisory%20FINAL%20508.pdf>

⁹ “2020 National Drug Threat Assessment.” U.S. DOJ Drug Enforcement Administration. March 2021.

https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf

¹⁰ “2020 National Drug Threat Assessment.” U.S. DOJ Drug Enforcement Administration. March 2021.

https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf

¹¹ Rosen, Liana W., & Lawrence, Susan V. “Illicit Fentanyl and China’s Role.” Congressional Research Service. January 29, 2021.

<https://fas.org/spp/crs/row/IF10890.pdf> and “2020 National Drug Threat Assessment.” U.S. DOJ Drug Enforcement Administration. March 2021. https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf

¹² “Fentanyl Flow to the United States.” DEA Intelligence Report. January 2020. https://www.dea.gov/sites/default/files/2020-03/DEA_GOV_DIR-008-20%20Fentanyl%20Flow%20in%20the%20United%20States_0.pdf

¹³ Rosen, Liana W., & Lawrence, Susan V. “Illicit Fentanyl and China’s Role.” Congressional Research Service. January 29, 2021.

<https://fas.org/spp/crs/row/IF10890.pdf> and “Fentanyl Flow to the United States.” DEA Intelligence Report. January 2020.

https://www.dea.gov/sites/default/files/2020-03/DEA_GOV_DIR-008-20%20Fentanyl%20Flow%20in%20the%20United%20States_0.pdf

¹⁴ Rosen, Liana W., & Lawrence, Susan V. “Illicit Fentanyl and China’s Role.” Congressional Research Service. January 29, 2021.

<https://fas.org/spp/crs/row/IF10890.pdf>

¹⁵ Rosen, Liana W., & Lawrence, Susan V. “Illicit Fentanyl and China’s Role.” Congressional Research Service. January 29, 2021.

<https://fas.org/spp/crs/row/IF10890.pdf>

¹⁶ Rosen, Liana W., & Lawrence, Susan V. “Illicit Fentanyl and China’s Role.” Congressional Research Service. January 29, 2021.

<https://fas.org/spp/crs/row/IF10890.pdf>

¹⁷ “S. 1790 - National Defense Authorization Act For Fiscal Year 2020.” Congress.gov. June 11, 2019. <https://www.congress.gov/bill/116th-congress/senate-bill/1790> and Cotton, Tom. “Cotton Appointed to Opioid Commission.” Tom Cotton, Senator for Arkansas. September 11, 2020. <https://www.cotton.senate.gov/news/press-releases/cotton-appointed-to-opioid-commission>

¹⁸ Portman, Rob. “Portman Makes Clear that STOP Act Must be Fully Implemented.” December 21, 2020.

<https://www.portman.senate.gov/index.php/newsroom/press-releases/portman-makes-clear-stop-act-must-be-fully-implemented>

¹⁹ “Mandatory Advance Electronic Information for International Mail Shipments.” Federal Register. March 15, 2021.

<https://www.federalregister.gov/documents/2021/03/15/2021-04373/mandatory-advance-electronic-information-for-international-mail-shipments>

²⁰ Portman, Rob, & Katko, John. “Biden’s Border Policies Are Worsening the Opioid Crisis.” Roll Call. June 11, 2021.

<https://www.rollcall.com/2021/06/11/bidens-border-policies-are-worsening-the-opioid-crisis/>

²¹ “2020 National Drug Threat Assessment.” U.S. DOJ Drug Enforcement Administration. March 2021.

https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf



DEFENDING AMERICA IN CYBERSPACE

Cyberattacks can cripple institutions from within without leaving a trace. In May 2021, Americans were left sitting in long lines at gas stations following a Russian-based ransomware attack that temporarily shut down Colonial Pipeline, an East Coast fuel pipeline.¹ This attack is only one of the recent high-profile cyber offensives, which pose a “grave” danger to national security.²

BACKGROUND

- A cyberattack occurs when an unauthorized user accesses confidential information systems, when system integrity is compromised by unauthorized data manipulation, or when system access is broken by blocking authorized users.³ A cyberattack may result in theft or manipulation of intellectual property, confidential plans, or personally identifiable information (PII), to name a few.⁴ These attacks are costly to both the direct and indirect parties involved.⁵ Two of the most dangerous attacks include:
 - **Advanced Persistent Threat (APT):** These attacks use continual and stealth hacking methods to gain access to a system. Once in the system, the goal is to remain inside and undetected for an extended period in order to gain unauthorized information. These attacks are more often carried out against high-value targets due to their laborious nature. They are often, but not exclusively, launched from foreign sources.⁶
 - **Ransomware:** This is malicious software designed to encrypt data files in order to prevent use of data. Then, the cyberattackers require a ransom in exchange for decryption. This ever-evolving technology has been used against governments and critical infrastructure organizations. In 2019, ransomware attacks cost the global economy \$11.5 billion and are projected to cost \$20 billion in 2021.⁷ The Cybersecurity and Infrastructure Security Agency (CISA), the Federal Bureau of Investigation, and the U.S. Secret Service provide resources on preventing and addressing ransomware attacks.⁸
- Cyberattacks threaten U.S. critical infrastructure and are growing in sophistication. There are 16 critical infrastructure sectors identified by CISA “whose assets, systems, and networks...are considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.”⁹ These sectors span across healthcare, manufacturing, financial services, government, transportation, and others that impact Americans every day. Each of these sectors is assigned a federal agency to serve as a partner within the federal government, known as a Sector Risk Management Agency, with the goal of ensuring security and resiliency.¹⁰
- Cyberattacks by foreign adversaries are a threat to national security. China, Russia, Iran and North Korea represent the most active foreign adversaries with the most sophisticated technologies and techniques. China and Russia consistently demonstrate their willingness to launch attacks on public and private sectors in the U.S. to serve their national interests.¹¹
 - China notably leverages “increasingly sophisticated” cyberattacks against the U.S. in order to steal data, intellectual property, or PII.¹² The U.S. Intelligence Community’s 2021 Annual Threat Assessment reports, “China presents a prolific and effective cyber-espionage threat, possesses substantial

cyberattack capabilities, and presents a growing influence threat.”¹³ For example, China was attributed with a July 2021 cyberattack against the Microsoft Exchange server which resulted in theft of trade secrets, intellectual property, and other information from several companies and organizations.¹⁴

- Russia views cyberattacks as a tool to deter opponents, control escalation, and prosecute conflicts.¹⁵ According to the 2021 Annual Threat Assessment, “Russia continues to target critical infrastructure, including underwater cables and industrial control systems.”¹⁶ Notably, the Russian Foreign Intelligence Service launched a cyberattack against SolarWinds in 2019,¹⁷ which allowed hackers to spy on the U.S. Government and private companies at an unprecedented scope, scale, and level of sophistication.¹⁸ The full impacts of the attacks are still being assessed.

The U.S. Government works to defend America from threats in cyberspace:

- **U.S. Cyber Command (CYBERCOM)** is the Department of Defense’s (DoD) unified military command for cyber operations against American adversaries.¹⁹
 - CYBERCOM began full operation in May 2010. Its goal is to “direct, synchronize, and coordinate cyberspace planning and operations to defend and advance national interests.”²⁰ CYBERCOM is directed to secure military capabilities in cyberspace by securing DoD information systems, supporting cyberspace operations, and defending against cyberattacks.²¹
 - CYBERCOM’s Cyber Mission Force (CMF) unit was established in 2012 to execute missions and coordinate operations.²² CMF consists of 133 teams which were fully operational by May 2018.²³
- **The Cybersecurity and Infrastructure Security Agency (CISA)**, within the Department of Homeland Security (DHS), is the U.S. home base for defending against cyber threats and collaborating with the private and public sectors to secure critical infrastructure.²⁴
 - CISA is responsible for securing ‘.gov’ networks as well as COVID-19 supply chains and elections.
 - CISA coordinates security efforts with trusted partnerships in public and private sectors. It is at the center of collective defense of critical infrastructure in the U.S. CISA is responsible for helping both private and public sectors to understand and manage cyber risks.²⁵

POLICY SOLUTIONS

Congress and security leaders must work to preserve the integrity of U.S. critical infrastructure in the complex domain of cyberspace in order to preserve national security. Congress should conduct oversight and assess the needs of DoD’s and DHS’s efforts to defend the U.S. from foreign and domestic threats in cyberspace.

- The Government Accountability Office (GAO) highlights four major areas of vulnerability across the federal government that need improvement, including: (1) establishing and implementing a comprehensive cybersecurity strategy and performing effective oversight, (2) securing federal systems and information, (3) protecting cyber critical infrastructure, and (4) protecting privacy and sensitive data.” Cyber and information security has been included in GAO’s annual *High-Risk List* report since 1997 including the most recent report from 2021.²⁶
- The federal government does not have uniform, defined standards of cybersecurity across the federal government. Congress could establish a uniform standard.²⁷ Congress could also evaluate current cybersecurity requirements across the government to ensure the requirements are simple and unified, so legislators can properly provide oversight.²⁸

- ¹Dustin Volz. Colonial Pipeline Chief Says Recovery From Ransomware Hack Not Complete. The Wall Street Journal. June 8, 2021. <https://www.wsj.com/articles/colonial-pipeline-chief-to-testify-in-senate-panel-on-ransomware-hack-11623144602>
- ²High Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas. GAO. March 2, 2021. <https://files.gao.gov/reports/GAO-21-119SP/index.html>
- ³Klon Kitchen and James Di Pane. Cybersecurity: National Policies and Practices for Understanding Hacks and Reducing Vulnerabilities. The Heritage Foundation. July 24, 2020. <https://www.heritage.org/cybersecurity/report/cybersecurity-national-policies-and-practices-understanding-hacks-and-reducing>
- ⁴Anna Scherbina. Americans need to know the economic truth about cyber threats. AEI. June 21, 2021. <https://www.aei.org/articles/americans-need-to-know-the-economic-truth-about-cyber-threats/>
- ⁵Id. Federal and private sector computer systems are becoming increasingly interconnected with third-party vendors, suppliers, business partners, and customers. This growing connection has expanded the potential for attackers to find exploitable vulnerabilities.
- ⁶What Is an Advanced Persistent Threat. Kaspersky. <https://www.kaspersky.com/resource-center/definitions/advanced-persistent-threats> and Sarah Maloney. What Is an Advanced Persistent Threat. Cybereason. January 9, 2018. <https://www.cybereason.com/blog/advanced-persistent-threat-apt>
- ⁷Klon Kitchen and James Di Pane. Cybersecurity: National Policies and Practices for Understanding Hacks and Reducing Vulnerabilities. The Heritage Foundation. July 24, 2020. <https://www.heritage.org/cybersecurity/report/cybersecurity-national-policies-and-practices-understanding-hacks-and-reducing>
- ⁸Ransomware 101. Stop Ransom Ware. <https://www.cisa.gov/stopransomware/ransomware-101>
- ⁹Critical Infrastructure Sectors. Cybersecurity & Infrastructure Security Agency. <https://www.cisa.gov/critical-infrastructure-sectors>
- ¹⁰Sector Risk Management Agencies. Cybersecurity & Infrastructure Security Agency. <https://www.cisa.gov/sector-risk-management-agencies>
- ¹¹Klon Kitchen and James Di Pane. Cybersecurity: National Policies and Practices for Understanding Hacks and Reducing Vulnerabilities. The Heritage Foundation. July 24, 2020. <https://www.heritage.org/cybersecurity/report/cybersecurity-national-policies-and-practices-understanding-hacks-and-reducing>
- ¹²Chinese Cyber Threat Overview and Actions for Leaders. Cybersecurity & Infrastructure Security Agency. <https://www.cisa.gov/publication/chinese-cyber-threat-overview-and-actions-leaders>
- ¹³Annual Threat Assessment of the US Intelligence Community. Office of the Director of National Intelligence. April 9, 2021. <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2021-Unclassified-Report.pdf>
- ¹⁴China Cyber Threat Overview and Advisories. Cybersecurity & Infrastructure Security Agency. <https://us-cert.cisa.gov/china#chinese>
- ¹⁵Russia Cyber Threat Overview and Advisories. Cybersecurity & Infrastructure Security Agency. <https://us-cert.cisa.gov/russia>
- ¹⁶Annual Threat Assessment of the US Intelligence Community. Office of the Director of National Intelligence. April 9, 2021. <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2021-Unclassified-Report.pdf>
- ¹⁷SolarWinds Cyberattack Demands Significant Federal and Private-Sector Response. GAO. April 22, 2021. <https://www.gao.gov/blog/solarwinds-cyberattack-demands-significant-federal-and-private-sector-response-infographic>
- ¹⁸James Di Pane and Travis Sapp. America's Top Cyber Warrior Warns of Growing Threats. The Heritage Foundation. May 31, 2021. <https://www.heritage.org/cybersecurity/commentary/americas-top-cyber-warrior-warns-growing-threats>
- ¹⁹James Di Pane. Cybersecurity: Policymakers Need a Consistent Means to Assess Capabilities. August 25, 2021. <https://www.heritage.org/defense/report/cybersecurity-policy-makers-need-consistent-means-assess-capabilities>
- ²⁰U.S. Cyber Command <https://www.cybercom.mil/About/History/>
- ²¹Id.
- ²²DOD Fact Sheet: Cyber Mission Force. U.S. Army Cyber Command. February 10, 2020. <https://www.arcyber.army.mil/Info/Fact-Sheets/Fact-Sheet-View-Page/Article/2079594/dod-fact-sheet-cyber-mission-force/>
- ²³Id.
- ²⁴Cybersecurity of federal information systems is governed by the Federal Information Security Management Act (FISMA), which gives DHS explicit operational authority for implementation and to set requirements for breach notification for federal agencies. Additionally, the NIST Framework serves as a voluntary set of risk-based best standards and practices to improve cybersecurity. <https://www.cisa.gov/about-cisa>
- ²⁵About CISA. Cybersecurity & Infrastructure Security Agency. <https://www.cisa.gov/about-cisa>
- ²⁶High Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas. GAO. March 2, 2021. <https://files.gao.gov/reports/GAO-21-119SP/index.html#appendix22>
- ²⁷Broadly, cybersecurity is the practice of protecting networks and data from unauthorized users or criminal activity and securing confidentiality, integrity, and proper availability of information and data. Security Tip (ST04-001). Cybersecurity & Infrastructure Security Agency. November 14, 2019. <https://us-cert.cisa.gov/ncas/tips/ST04-001> and Dustin Carmack. Admiral Michael Rogers on Confronting the Challenging Cyber Landscape. The Heritage Foundation. September 9, 2021. <https://www.heritage.org/cybersecurity/event/admiral-michael-rogers-confronting-the-challenging-cyber-landscape> and 2021 Annual Report on Implementation. Cyberspace Solarium Commission. August 2021. <https://www.solarium.gov/public-communications/2021-annual-report-on-implementation>
- ²⁸Chris Jaikaran. Federal Cybersecurity: Background and Issues for Congress. Congressional Research Service. September 29, 2021. <https://www.crs.gov/Reports/R46926?source=search&guid=0cf7bbad06ff46b2a097ab19b3c9e2cf&index=1>



RESPOND TO CHINESE TRADE PRACTICES

Amidst escalating trade tensions between the United States and China, Congress should engage in efforts to support businesses seeking alternatives to imports from China. The United States should actively engage global trading partners to quickly develop new international supply chains.

BACKGROUND

According to World Bank data, average Chinese tariffs across all goods have fallen from more than 32 percent in 1992 to 2.5 percent in 2019.¹ Even with such a radical reduction, China's average tariff rate across all goods remains higher than that of top industrialized nations.²

China also remains the top source of U.S. imports (\$435 billion in 2020) and third-largest export market (\$124 billion in 2020). More importantly, China is the second largest foreign holder of U.S. Treasury securities (at \$1 trillion as of September 2021), behind Japan.³

Tensions between the U.S. and China have increased due to several key issues: The U.S. trade deficit with China, theft of U.S. intellectual property, and Chinese industrial subsidization.

Following a United States Trade Representative (USTR) investigation⁴ regarding Chinese policies on technology transfers and intellectual property, the U.S. imposed 25 percent tariffs on \$34 billion of Chinese goods⁵ in one trade action and then \$16 billion of goods in a second action.⁶ China responded with increased duties on U.S. goods, which prompted further U.S. tariffs.⁷

Chinese Trade Policy in a Historical Context

To fully understand the current dispute between China and the U.S., Congress must view trade tensions between China and the United States as symptoms of a clash between a modern superpower and a nation seeking to reclaim its dominant global status. For most of modern history, the Chinese Empire (221 BC-1912 AD) governed by various dynasties was arguably the most powerful nation in the world. The ascendance of Western powers — particularly the United States — is a relative historical anomaly.

After Britain's defeat of China in the First Opium War at the end of the 19th century, China's self-described "century of humiliation" began.⁸ The period would lead China into wars, subordination to Western powers, and political upheaval. The fall of China's standing in the world is central to the Communist People's Republic of China's founding narrative. Matt Schiavenza, a former contributing writer for *The Atlantic*, sums this mythology succinctly:

Long the world's pre-eminent civilization, China fell behind the superior technology of the West over the centuries, an imbalance that finally came to a head with the loss in the Opium Wars. This begun the most tumultuous century in the country's—or any country's—history, one that featured an incessant series of wars, occupations, and revolutions and one that did not end until the victory of the Communist Party in

The “century of humiliation” fuels China’s ambition to reclaim its former glory. The China Dream “captures the intense yearning of a billion Chinese: to be rich, to be powerful, and to be respected.”¹⁰

The Modern Challenge

Ambition to reclaim former glory led to the creation of the Made in China 2025 program.¹¹ The objectives of the program are unambiguous:¹²

China 2025 sets specific targets: by 2025, China aims to achieve 70 percent self-sufficiency in high-tech industries, and by 2049—the hundredth anniversary of the People’s Republic of China—it seeks a dominant position in global markets.

Chinese tactics to achieve these objectives do not—and will not—align with Western notions of free trade and open markets. China will use government subsidies, continue to heavily employ state-owned enterprises, and pursue intellectual property acquisition by any means necessary to catch up with—and ultimately overtake—Western technological and industrial advantages.

Because China views Western technology as a primary contributor to the “century of humiliation,” it will not likely act as a good-faith trading partner when it comes to intellectual property protections and competitive fairness.

As China depends on trade to accomplish its grander objectives, it must either trade with the United States or replace billions in American demand for Chinese products. China’s Belt and Road Initiative¹³ (BRI), also referred to as China’s “trillion dollar plan,” seeks to do just that by dominating global trade. The BRI is an attempt to rebuild the ancient Chinese trade infrastructure known as the Silk Road which established trade networks throughout Asia and even reached into Europe.

By issuing low-interest loans to help nations modernize various land and maritime infrastructure, China is creating a major trade network throughout Africa, India, and Asia. More importantly, it has the power to leverage indebtedness of BRI countries in exchange for trade concessions.¹⁴ According to the Council on Foreign Relations, “Overall debt to China has soared since [BRI’s launch in] 2013, surpassing 20 percent of GDP in some countries.”¹⁵

China has also taken action to militarize its trade routes through the South China Sea by conducting missile tests,¹⁶ developing military bases, and engaging in island building in an attempt to lay claim to contested territory between six sovereign nations.¹⁷ Approximately one-third of global maritime trade flows through the South China Sea.¹⁸

POLICY SOLUTIONS

Whether through multilateral or bilateral trade agreements, the United States should seek to aggressively open superior trade routes throughout the nations covered by the BRI. Rather than simply noting China’s regional ambitions, the United States should seek to be as competitive as possible on the global stage. This will undoubtedly require measures beyond proactive trade policies such as:

- Streamline regulations to ensure that domestic industries experience as little operational disruption and additional costs as possible, while complying with various environmental, labor, and health safeguards.
- Provide strong incentives for private-sector innovations in cyber-security and encourage technological dissemination across domestic and allied industries.

- Accommodate domestic and allied industries seeking to move supply chains away from China and build them domestically or in allied countries.

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¹ *Tariff rate, applied, weighted mean, all products (%)*, The World Bank (2021), Tariff rate, applied, weighted mean, all products (%) - China | Data (worldbank.org).

² Patturaja Murugaboopathy, *U.S.-China trade: tariff and non-tariff barriers*, Reuters (Feb. 26, 2019), <https://www.reuters.com/article/us-usa-trade-china-graphic/u-s-china-trade-tariff-and-non-tariff-barriers-idUSKCN1QG0CF>.

³ 2020: U. S. Trade in Goods with China, U.S. Census Bureau, (last visited Nov. 18, 2021), available at <https://www.census.gov/foreign-trade/balance/c5700.html> and U.S. Department of Treasury, Major Foreign Holders of Treasury Securities, (last visited Nov., 18, 2021), available at <https://ticdata.treasury.gov/Publish/mfh.txt>.

⁴ Findings of the Investigation Into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of The Trade Act Of 1974, Office of The United States Trade Representative Executive Office of The President (Mar. 22, 2018), <https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>.

⁵ *China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, regulations.gov, Office of United States Trade Representative (Mar. 22, 2018), <https://www.regulations.gov/document?D=USTR-2018-0005-0001>.

⁶ *Requests for Comments: Proposed Determination of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, regulations.gov, Office of United States Trade Representative (Jul. 31, 2018), <https://www.regulations.gov/document?D=USTR-2018-0018-0001>.

⁷ *Proposed Modification of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, regulations.gov, Office of United States Trade Representative (Sep. 6, 2018), <https://www.regulations.gov/document?D=USTR-2018-0026-0001>.

⁸ Matt Schiavenza, *How Humiliation Drove Modern Chinese History*, The Atlantic (Oct. 25, 2013), <https://www.theatlantic.com/china/archive/2013/10/how-humiliation-drove-modern-chinese-history/280878/>.

⁹ *Id.*

¹⁰ Graham Allison, *What Xi Jinping Wants*, The Atlantic (May 31, 2017), <https://www.theatlantic.com/international/archive/2017/05/what-china-wants/528561/>.

¹¹ James McBride, Andrew Chatzky, *Is 'Made in China 2025' a Threat to Global Trade?*, Council on Foreign Relations (May 13, 2019), <https://www.cfr.org/backgrounder/made-china-2025-threat-global-trade>.

¹² *Id.*

¹³ James McBride, Andrew Chatzky, *China's Massive Belt and Road Initiative*, Council on Foreign Relations (May 21, 2019), <https://www.cfr.org/backgrounder/chinas-massive-belt-and-road-initiative>.

¹⁴ *Id.*

¹⁵ Andrew Chatzky, James McBride, *China's Massive Belt and Road Initiative*, Council on Foreign Relations (Jan 28, 2020), China's Massive Belt and Road Initiative | Council on Foreign Relations (cfr.org).

¹⁶ Amanda Macias, Courtney Kube, *Chinese military conducts anti-ship ballistic missile tests in the hotly contested South China Sea*, CNBC (July 1, 2019), <https://www.cnbc.com/2019/07/01/chinese-military-conducts-missile-tests-in-the-south-china-sea.html>.

¹⁷ Council on Foreign Relations, *China's Maritime Disputes: A CFR InfoGuide Presentation* (July 31, 2019), https://www.cfr.org/interactives/chinas-maritime-disputes?cid=otr-marketing_use-china_sea_InfoGuide#!/chinas-maritime-disputes?cid=otr-marketing_use-china_sea_InfoGuide.

¹⁸ Roncveert Ganan Almond, *Trade, War, and the South China Sea*, The Diplomat (Sept. 1, 2018), <https://thediplomat.com/2018/09/trade-war-and-the-south-china-sea/>.



REDUCE RELIANCE ON CHINESE SUPPLY CHAINS

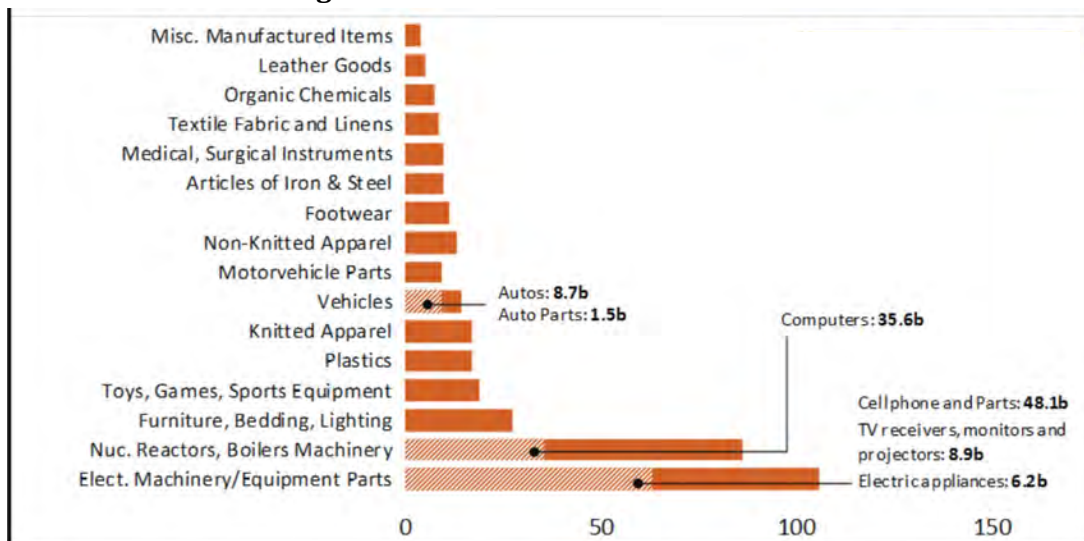
Congress must address U.S. dependency on goods and materials sourced from China that pose serious economic and national security risks.

BACKGROUND

Global economies are interconnected, interdependent, and complex.¹ Congressional review of the United States’ reliance on China for sourcing critical goods is overdue. In a historical context, China aims to quickly transition from the “World’s Factory” to the dominant global power.²

Since the U.S. supported China’s accession to the World Trade Organization (WTO) in 2001, China has emerged as the world’s second-largest economy.³ The U.S. is currently a net importer from China. In 2020, China accounted for about \$435 billion in imports,⁴ representing the United States’ largest supplier of goods and our third-largest trading partner overall. Moreover, China was the second largest foreign holder of U.S. Treasury securities as of September 2021.⁵

Figure 1. U.S.-China Trade in 2019⁶



Source: Congressional Research Service (CRS) with data from Global Trade Atlas.

Note: Dashed portion of the bar depicts a subset of the product category.

2019

In 2017, the U.S. Trade Representative (USTR) published their 16th report on China’s WTO compliance. The USTR report concluded the U.S. “erred” in supporting China’s inclusion to the WTO in 2001, as “it is now clear that the WTO rules are not sufficient to constrain China’s market-distorting behavior.”⁷

Furthermore, the report found that China failed to revise “hundreds of laws, regulations, and other measures” to

satisfy WTO compliance, focusing instead on leveraging WTO membership to become “a dominant player in international trade.”⁸

China’s trade weaponization poses a direct threat to national security. In 2018, FBI Director Christopher Wray stated, “No country presents a broader, more severe threat to our ideas, our innovation, and our economic security than China.”⁹ The 2017 National Security Strategy of the United States designated China as a strategic competitor engaged in “economic aggression.”¹⁰

The Trump administration encouraged foreign allies to ban imports of certain products from Chinese-backed company Huawei based on security concerns.¹¹ Unfortunately, global partners have been reluctant to support such a ban. In response, a May 2019 editorial by state-run press agency Xinhua stated that by “waging a trade war against China, the United States risks losing the supply of materials that are vital to sustaining its technological strength.”¹²

Rosemary Gibson, Senior Advisor at the Hastings Center, testified before a U.S.-China Economic and Security Review Commission hearing in 2019 that U.S. dependence on China for medicine posed security risks, stating, “The centralization of the global supply chain of medicines in a single country, whatever country it may be, makes it vulnerable to interruption, whether by mistake or design.”¹³ Following threats from China to restrict access to medical supplies during the COVID-19 pandemic in 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which required reporting and public disclosure of U.S. medical supply chain risks.¹⁴

In 2019, the USTR published a list of products of which China supplied 75 percent or more of U.S. imports in 2018. Top products in this list included “cell phones, laptop computers, video game consoles, certain toys, computer monitors, and certain items of footwear and clothing.” Products such as pharmaceuticals, select medical goods, rare earth materials, and critical minerals were not identified in the USTR lists.¹⁵

Other sources of potential supply chain vulnerability include:

- **Pharmaceuticals** - Despite widespread reports¹⁶ of high percentages of U.S. active pharmaceutical ingredient (API) imports from China, a Food and Drug Administration (FDA) official testified to Congress in 2019 that the FDA “doesn’t know whether Chinese facilities are actually producing APIs, how much they are producing, or where the APIs they are producing are being distributed...[nor] have information that would enable us to assess the resilience of the U.S. manufacturing base, should it be tested by China’s withdrawal from supplying the U.S. market,” due to insufficient data.¹⁷
 - Although India sources about 45 percent of the U.S.’s over-the-counter drugs, about 75 percent of its ingredients are sourced from China, according to the American Enterprise Institute.¹⁸
- **Rare Earth Materials** - The U.S. Geological Survey (USGS) reports that China supplies about 80 percent of rare earth compounds and metals to the U.S.¹⁹ After China, the U.S. is the second-largest producer of rare earth materials.²⁰ Rare earth materials are critical to the production of a wide range of electronic components used in both consumer and national defense applications.²¹ Scandium and yttrium, both which are used to make various metal alloys, are two examples of the 17 rare earth elements. According to USGS, the U.S. was 100 percent import-reliant on foreign nations for scandium and yttrium supplies. China was the largest source of yttrium to the U.S. in 2020 (94 percent of yttrium compounds), and one of the four highest-listed sources for scandium.²²
- **Electronics and Information Technology (IT)** – China sourced an estimated 60 percent of U.S. imports of information, communication, and technology equipment in 2018.²³ Separately, much of America’s \$90 billion annual IT budget is spent on outdated, legacy technologies sourced from China. A report from the U.S.-China Economic and Security Review Commission found that the federal government’s top seven IT providers sourced over 51 percent of its materials from China since 2012, constituting a risk to national security.²⁴
- **Personal Protective Equipment (PPE)** - China supplies about 48 percent of PPE to the U.S.²⁵

- **Shoes and Apparel** - The U.S. relies on overseas sourcing for about 99 percent of shoes. China accounts for about 70 percent of that amount, according to the Footwear Distributors of America.²⁶ Furthermore, the American Apparel and Footwear Association estimates that China supplies about 40 percent of all U.S. clothing.²⁷ While U.S. imports from Vietnam continue to grow, Vietnam imports up to an estimated 60 percent of its raw materials for the garment industry from China.²⁸
- **Other Products** - A 2019 Quartz report found, based on data from the U.S. Census Bureau, that China sources over 90 percent of the following supplies to the U.S.: electric blankets (99 percent); video game consoles and umbrellas with a telescopic shaft (98 percent each); plastic artificial flowers, non-plastic artificial flowers, electric toasters, thermoses, garden umbrellas, and iron or steel-based cooking appliances and plate warmers (97 percent each); portable radio players and taperecorders (96 percent); and baby carriages and strollers (95 percent).²⁹

POLICY SOLUTIONS

- The U.S. must strengthen its international alliances and diversify its global supply chain to reduce economic dependency on China. U.S. leadership on the global stage will empower the United States and its allies, not China, to set the rules of the road.³⁰ Congress should strengthen multilateral alliances with international partners, particularly with Pacific regional allies, as well as close geographical allies in central and south America, by reducing and harmonizing trade barriers.³¹
- About one-third of global maritime trade flows through the South China Sea.³² As territorial disputes over sea control between China and U.S. regional allies continue, Congress must recognize secure access to the South China Sea as a critical economic and national security priority.
- Congress may consider directing U.S. statistical agencies, such as the Census Bureau, the Department of Commerce, the U.S. International Trade Commission, and the Bureau of Economic Analysis “to review methodologies for collecting and publishing...detailed supply chain data to better document the country of origin” for imported goods.³³
 - As Congress considers implementing reporting requirements on sourcing and countries of origin, Congress must also recognize that imported goods from countries like India, Taiwan, Vietnam, and other partners may contain raw materials sourced from China.
- Congress must conduct oversight to assess whether the tax code may unintentionally penalize or discourage domestic production. In doing so, Congress must also support reforming costly labor laws that place U.S. manufacturing at an economic disadvantage.
- Congress may also consider establishing a National Supply Chain Risk Management (SCRM) Strategy to secure the federal government’s technology products and services.³⁴
- Countering China’s ambitions to dominate the technology sector is essential to U.S. economic and security interests.³⁵ Congress should examine U.S. participation in existing multilateral arrangements to identify opportunities to reduce China’s international influence.
 - Currently, the U.S. is party to the Wassenaar Arrangement, a voluntary 42-member international export control agreement on conventional arms and dual-use goods and technologies.³⁶ The Arrangement seeks to mandate controls to prevent digital weaponization by repressive regimes. Notably, China is not a member to the Wassenaar Arrangement.
 - Unfortunately, the Wassenaar Arrangement contains certain problematic requirements which unintentionally undermine strategic interests. The “intrusion software” provision, for example, requires complex licensing approvals on cybersecurity information sharing and development. Congress must take action to reform the Wassenaar Arrangement, which has broad, bipartisan support.³⁷
- Separately, Congress must conduct oversight of the WTO and consider opportunities to hold China

accountable for its noncompliance with WTO requirements.³⁸ Currently, WTO membership enables China to impose trade sanctions on U.S. goods.³⁹

- Finally, western allies established a system to bar the sale of sensitive military technologies to the Soviet Union during the Cold War. Congress may consider a similar alliance to limit “key strategic imports” from China.⁴⁰

Publ. 2020 (Updated Nov. 22, 2021)

¹ The Economic Complexity Index lists the United States as “the 3rd largest export economy in the world and the 7th most complex [economy].” The Observatory of World Complexity, the Economic Complexity of the United States, last visited May 8, 2020, available at <https://oec.world/en/profile/country/usa/>.

² See, *Respond to Chinese Trade Practices; Hold China Accountable for COVID-19*; and also *Reject Authoritarian Internet Control*, House Republican Policy Committee (March 2020).

³ The World Bank, “The World Bank in China,” March 28, 2017, available at <http://www.worldbank.org/en/country/china/overview> and *The China Trade Challenge: Phase II*, The Committee for Economic Development (2020), available at <https://www.ced.org/2020-solutions-briefs/the-china-trade-challenge-phase-ii>.

⁴ 2020: U. S. Trade in Goods with China, U.S. Census Bureau, (last visited Nov. 18, 2021), available at <https://www.census.gov/foreign-trade/balance/c5700.html>

⁵ 2020: U. S. Trade in Goods with China, U.S. Census Bureau, (last visited Nov. 18, 2021), available at <https://www.census.gov/foreign-trade/balance/c5700.html> and U.S. Department of Treasury, Major Foreign Holders of Treasury Securities, (last visited Nov., 18, 2021), available at <https://ticdata.treasury.gov/Publish/mfh.txt>.

⁶ *COVID-19, China Medical Supply Chains and Broader Trade Issues*, CRS, R46304, (April 6, 2020), available at <https://crsreports.congress.gov/product/pdf/R/R46304>

⁷ USTR, *2017 Report to Congress on China's WTO Compliance*, January 2018, <https://ustr.gov/sites/default/files/files/Press/Reports/China%202017%20WTO%20Report.pdf>.

⁸ *Id.*

⁹ Further, “U.S. Assistant Attorney General John C. Demers stated that, from 2011 to 2018, China was linked to more than 90% of the Justice Department’s cases involving economic espionage and two-thirds of its trade secrets cases.” Wayne M. Morrison, U.S.-China Trade Issues, CRS (June 23, 2019), <https://fas.org/sgp/crs/row/IF10030.pdf>.

¹⁰ The White House, Executive Office of the President, *National Security Strategy of the United States of America, December 2017*, <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905-2.pdf>.

¹¹ In May 2019, President Trump issued Executive Order 13873, Securing the Information and Communications Technology and Services Supply Chain. The order stated the Administration's view that U.S. purchases of information, communications, and technology (ICT) goods and services from “foreign adversaries” posed a national security risk to the United States and authorized the Federal government to ban certain ICT transactions deemed to pose an “undue risk.” On the same day, the U.S. Commerce Department announced that it would add Chinese telecommunications firm Huawei and 68 of its non-U.S. affiliates to the Department's Bureau of Industry and Security Entity List, which would require an export license for the sale or transfer of U.S. technology to such entities. CRS, *supra* at 9.

¹² Wayne M. Morrison, *Trade Dispute with China and Rare Earth Elements*, CRS, IF1125 (June 28, 2019) <https://fas.org/sgp/crs/row/IF11259.pdf>.

¹³ *Exploring the Growing U.S. Reliance on China's Biotech and Pharmaceutical Products, Hearing Before the U.S.-China Economic and Security Review Commission [hereinafter USCC]*, 116th Cong. (July 31, 2019). <https://www.uscc.gov/sites/default/files/2019-10/July%2031,%202019%20Hearing%20Transcript.pdf>.

¹⁴ CRS, *supra* at 9.

¹⁵ USTR, *USTR Announces Next Steps on Proposed 10 Percent Tariff on Imports from China*, (Aug. 13, 2019), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/august/ustr-announces-next-steps-proposed>. The full list can be found at the following source, see Annexes C and D at 43450, https://ustr.gov/sites/default/files/enforcement/301Investigations/Notice_of_Modification_%28List_4A_and_List_4B%29.pdf and https://ustr.gov/sites/default/files/enforcement/301Investigations/84_FR_22564.pdf.

¹⁶ China was widely reported to supply an estimated 90 percent of U.S. antibiotics, including about 80 percent of active pharmaceutical ingredients (APIs) and 70 percent of acetaminophen (Tylenol). Yanzhong Huang, *U.S. Dependence on Pharmaceutical Products from China*, Council on Foreign Relations (Aug. 14, 2019), <https://www.cfr.org/blog/us-dependence-pharmaceutical-products-china>.

¹⁷ FDA Director Woodcock attributed growth of foreign manufacturing of APIs to the U.S. in part to a lower labor cost advantage, with a 2011 FDA study estimating that API manufacturing in India could lower costs for U.S. and EU companies by 30 to 40 percent. *Safeguarding Pharmaceutical Supply Chains in a Global Economy, Hearing Before the House Cmte. On Energy and Commerce, Subcommittee on Health*, 116th Cong. (Oct. 30, 2019). <https://www.fda.gov/news-events/congressional-testimony/safeguarding-pharmaceutical-supply-chains-global-economy-10302019>.

¹⁸ American Enterprise Institute, *We're too dependent on China for too many critical goods. Especially Medicine*. Mar. 21, 2020 <https://www.aei.org/op-eds/were-too-dependent-on-china-for-too-many-critical-goods-especially-medicine/>.

¹⁹ U.S. Geological Survey [hereinafter USGS], Mineral Commodity Summaries, Rare Earths, 2021, <https://pubs.usgs.gov/periodicals/mcs2021/mcs2021.pdf>.

²⁰ *Id.*

²¹ See *Combat America's Critical Mineral Dependency*, House Republican Policy Committee (March 2020), <https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/10%20-%20Combat%20America%27s%20Critical%20Mineral%20Dependency%20NR.pdf>.

²² According to USGS, “nearly all imports of yttrium metal and compounds are derived from mineral concentrates processed in China.” USGS lists Europe, China, Japan, and Russia as top scandium suppliers to the U.S. The USGS figure for gallium (metal) includes Hong Kong in its sourcing from China. USGS, Mineral Commodity Summaries, 2021 <https://pubs.usgs.gov/periodicals/mcs2021/mcs2021.pdf>.

²³ Wayne M. Morrison, *U.S.-China Trade Issues*, CRS (June 23, 2019), <https://fas.org/sgp/crs/row/IF10030.pdf> and Hugh R. Morley, *The Journal of Commerce, China Dominates Growing US Electronics Imports, (May 28, 2018)*, https://www.joc.com/breakbulk/china-dominates-us-electronics-imports—big-and-small-screens_20180525.html.

²⁴ *Supply Chain Vulnerabilities from China in U.S. Federal Information and Communications Technology, Hearing Before USCC*, (Written testimony of Tara Beeny, Senior Business Analyst, Interos Solutions, Inc.) April 2018 <https://docs.house.gov/meetings/IF/IF16/20180516/108301/HHRG-115-IF16-20180516-SD105-U105.pdf>.

²⁵ Chad P. Bown, Peterson Institute for International Economics, *COVID-19: China's Exports of Medical Supplies Provide a Ray of Hope*, Mar. 26, 2020, <https://www.piie.com/blogs/trade-and-investment-policy-watch/covid-19-chinas-exports-medical-supplies-provide-ray-hope>.

²⁶ Andria Cheng, *Forbes*, statement from the Footwear Distributors of America, *P&G Says 17,600 Products Could Be Affected By Coronavirus in China, Highlighting Supply Chain Risk*, Feb. 20, 2020 <https://www.forbes.com/sites/andriacheng/2020/02/20/chinas-coronavirus-outbreak-threatens-to-send-global-supply-chain-into-a-tailspin-pg-alone-has-17600-items-that-could-be-affected/#5492d86a156f>.

²⁷ Esther Fung, *Wall Street Journal*, *Apparel Companies Fear Tariffs Could Squash Profits*, Aug. 22, 2019, <https://www.wsj.com/articles/u-s-apparel-industry-works-to-blunt-impact-of-tariffs-11566293401>.

²⁸ *From Section 301 to COVID-19: How a Volatile China Changed Supply Chains*, Supply Chain Dive, Mar. 31, 2020, <https://www.supplychaindive.com/news/coronavirus-china-tariff-trade-supply-chains/574702/>.

²⁹ Dan Kopf, *Quartz*, *The US will have a hard time not getting these products from China*, July 30, 2019, <https://qz.com/1654798/these-are-the-products-the-us-is-most-reliant-on-china-for/>.

³⁰ China is aggressively pursuing a similar strategy to reduce its dependency on trade with the United States. China's Belt and Road Initiative, or the “One Belt, One Road” initiative (BRI), commits a trillion-dollar infrastructure investment across 60 countries. The BRI is an attempt to rebuild the ancient Chinese trade infrastructure known as the Silk Road which established tradenetworks throughout Asia and into Europe. By issuing low-interest loans to help nations modernize various land and maritime infrastructure, China is creating a major trade network throughout Africa, India, and Asia. More importantly, it has the power to leverage indebtedness of BRI countries in exchange for trade concessions.

³¹ Collectively, the U.S., Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam represent about 40 percent of the world's GDP, as a start.

³² *How much trade transits the South China Sea?*, Center for Strategic & International Studies, <https://chinapower.csis.org/much-trade-transits-south-china-sea/#easy-footnote-bottom-1-3073> and Pete Cobus, *Conflict and Diplomacy on the High Seas*, Voice of America, <https://projects.voanews.com/south-china-sea/>.

³³ USCC, 2019 Recommendations to Congress, <https://www.uscc.gov/sites/default/files/2019-11/2019%20Recommendations%20to%20Congress.pdf>.

³⁴ *Supply Chain Vulnerabilities from China in U.S. Federal Information and Communications Technology, Hearing Before USCC*, (Written testimony of Tara Beeny, Senior Business Analyst, Interos Solutions, Inc.) April 2018 <https://docs.house.gov/meetings/IF/IF16/20180516/108301/HHRG-115-IF16-20180516-SD105-U105.pdf>.

³⁵ The China's Made in China 2025 plan directs about \$300 billion into ten “strategic sectors,” with technology as a leading strategic sector. Brigitte Dekker, *The US-China trade-tech stand-off*, Clingendael Report, Aug. 2019, https://www.clingendael.org/sites/default/files/2019-08/Report_US-China_stand-off.pdf.

³⁶ *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Vol II, List of Dual-Use Goods and Technologies and Munitions List*, compiled by the Wassenaar Arrangement Secretariat, December 2018, <https://www.wassenaar.org/app/uploads/2019/consolidated/WA-DOC-18-PUB-001-Public-Docs-Vol-II-2018-List-of-DU-Goods-and-Technologies-and-Munitions-List-Dec-18-1.pdf>.

³⁷ Congressional letter to the Hon. Susan Rice, Assistant to the President for National Security Affairs, Dec. 16, 2015, https://langevin.house.gov/sites/langevin.house.gov/files/documents/12-16-15_Langevin-McCaul_Wassenaar_Letter.pdf.

³⁸ Committee for Economic Development, *supra* at 3.

³⁹ Ana Swanson, *W.T.O. Allows China to Impose Trade Sanctions on U.S. Goods*, *New York Times*, Nov. 1, 2019, <https://www.nytimes.com/2019/11/01/business/wto-china-us-trade.html>.

⁴⁰ AEI, *supra* at 17.



REJECT AUTHORITARIAN INTERNET CONTROL

In 2016, the Obama administration transferred remaining U.S. oversight of the Internet’s “address book” to the multistakeholder-led Internet Corporation for Assigned Names and Numbers (ICANN). Despite ceding U.S. oversight, adversarial nations such as Russia and China continue to pursue their own censored alternatives to a free and open Internet.

BACKGROUND

The Internet is a complex system of decentralized, yet interconnected, networks.¹ The Internet is organized using Internet Protocol (IP) addresses, which are a series of numbers that identify the computers that house information and resources. The domain name system (DNS), often referred to as the Internet’s “address book,” provides Internet users with a simplified system that uses words rather than numeric IP addresses. To access the website of the U.S. House of Representatives (www.house.gov), or the House Republican Policy Committee (republicanpolicy.house.gov), for example, users search words, rather than a complex arrangement of numbers.

The United States created and developed the Internet and has supervised it since its inception. In 1998, pursuant to a directive from President Bill Clinton to privatize and internationalize the DNS, the U.S. Department of Commerce’s National Telecommunications and Information Administration (NTIA) delegated authority to ICANN under a contract to coordinate certain policies governing the DNS.² ICANN is a non-profit organization consisting of over 160 foreign countries, including Russia and China, as well as private organizations. ICANN is headquartered in Los Angeles and subject to California law.³

Transfer of Internet Oversight from the U.S. to ICANN

The NTIA maintained its contract with ICANN until September 2015.⁴ On September 30, 2016, the Obama administration transitioned full oversight and responsibility of Internet domains to ICANN.

Critics of the transfer argued that ceding the U.S. Government’s remaining oversight of ICANN would also cede First Amendment protections over the Internet.⁵ In 2015, the House passed the Domain Openness Through Continued Oversight Matters (DOTCOM) Act by a vote of 378-25.⁶ The DOTCOM Act would have retained NTIA oversight until ICANN reported complying with certain certifications. In 2016, a Texas judge blocked a last-minute attempt by four U.S. states to force NTIA to retain its ICANN oversight.⁷

Advocates of the transfer to the ICANN multistakeholder model countered that retaining limited U.S. oversight would exacerbate authoritarian nations’ attempts to seize Internet control.⁸ In 2012, for example, Russia, China, and other adversarial nations supported transferring Internet control to the United Nations’ (UN) International Telecommunications Union (ITU), citing concerns over perceived U.S. control and influence. The vote failed due to the U.S. and three allied dissenting nations.⁹ In its dissenting opinion, the U.S.-led delegation asserted that “the United States continues to believe that internet policy must be multistakeholder-driven [that] should not be determined by member states, but by citizens, communities, and broader society.”¹⁰ In 2016, former NTIA Administrator Strickling testified before Congress that blocking the transition would be a “gift to Russia” and other authoritarian regimes.¹¹

Authoritarian Nations Pursue Alternative “Independent Internet”

Unfortunately, terminating the U.S. contract with ICANN has not deterred adversarial nations such as Russia and China from continuing to aggressively pursue alternatives to the Internet. According to Robert Knake who worked on the ICANN transfer, 2019 marks “the beginning of the end” for the open Internet, as China, Russia, and other authoritarian nations will continue to “establish a separate root system for their share of the internet.”¹²¹² Mr. Knake notes that adversarial nations can “simply replicate the root zone file from the ICANN controlled root, providing the exact name resolution as the domain name system that ICANN manages.”¹³

Russia has particularly escalated efforts to develop alternatives to the free and open Internet.

- **Creating a new, alternative “BRICS Internet.”** In November 2017, one year after the full U.S.-ICANN transition, Kremlin press secretary Dmitry Peskov told state-sponsored propaganda news outlet *RT* that President Putin “had approved a plan” to create an “alternate” and “independent Internet” for BRICS nations – Brazil, Russia, India, China, and South Africa – by August 1, 2018 to “shield them from ‘possible external influence,’” particularly U.S. influence.¹⁴ If a separate and independent “BRICS Internet” is successfully developed, it would pose an existential threat to the free and open Internet, as the U.S. and allies may be cut off from over half of the world’s Internet users.
- **Blocking Russians’ Access to the current Internet.** In May 2019, Russia passed a broad internet censorship law, often referred to as the internet sovereignty law, or the “online Iron Curtain.”¹⁵ The law requires Russian internet service providers (ISPs) to route information traffic through state-sponsored exchange points, effectively creating its own DNS.¹⁶ It also authorizes the Kremlin to disconnect Russia from the world wide web “in an emergency.”¹⁷
 - Russia’s internet sovereignty law builds off of previous internet censorship efforts, such as a March 2019 law authorizing Russia to impose fines on actors deemed by the government to be spreading “fake news” and demonstrating “blatant disrespect” toward state authorities.¹⁸
- **Disconnecting from the Internet and testing a Russian alternative.** On December 29, 2019, Russia claimed it successfully disconnected from the global Internet and tested its own alternative “without ordinary users...noticing [the change].”¹⁹

Post-U.S. oversight attempts by ICANN to assuage Chinese Communist Party concerns have also yielded little results. China, ranked by Freedom House in 2018 as the “worst offender of internet freedom” for the fourth year in a row,²⁰ has progressively implemented the world’s largest series of policies to enforce domestic seizure of Internet information flow, referred to as the “Great Firewall.”²¹ According to Mr. Knake, ICANN’s efforts to establish “more instances of root servers [within China],” for example, has “done little to slow Chinese ambitions to break from the global internet. The reason is simple – a global internet that is open and free is not compatible with a Chinese state that views openness and freedom as a threat to its stability.”²²

POLICY SOLUTIONS

Although the United States has no current statutory authority over the Internet’s DNS,²³ Congress may consider options to conduct oversight of ICANN’s governance of DNS that may have economic or national security implications.

Domestically, Congress must reject legislation and regulations which mirror those taken by authoritarian nations around the globe seeking to stifle individual speech and freedom of the press. For example, Sen. Elizabeth Warren (D-MA) released a proposal to impose civil and criminal penalties on actors who “knowingly disseminat[e] false information about when and how to vote in U.S. elections” for the “explicit purpose of undermining” voter turnout.²⁴ The proposal directly marks government exercising control over private U.S. social media organizations over political disagreement about policing information disseminated by users on their platforms.

- Congress must consider the similarities between Sen. Warren’s proposal and the Russian law passed in March 2019, which imposes punitive damages to punish what the government decrees to be considered “fake news.” Other laws which curb online freedoms, such as banning popular encrypted devices,²⁵ should similarly be viewed with skepticism.

Furthermore, the U.S. should aggressively seek to expand international access to U.S. goods and services. A globally competitive United States creates consumer pressure on authoritarian regimes for access to information, services, and products that reflect America’s values. This effort requires proactive trade policy measures such as:

- Streamlining regulations to empower private sector innovations in cybersecurity and encouraging technological dissemination across domestic and allied industries; and
- Accommodating domestic and allied industries seeking to move supply chains away from China and build them domestically or in allied countries.

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¹ According to CRS, “The Internet is often described as a ‘network of networks’ because it is not a single physical entity, but hundreds of thousands of interconnected networks linking [millions] of computers around the world. As such, the Internet is international, decentralized, and comprised of networks and infrastructure largely owned and operated by entities.” Lennard G. Kruger, Cong. Research Serv., R44042, *The Future of Internet Governance: Should the United States Relinquish its Authority over ICANN?* (2016), <https://www.crs.gov/Reports/R44022?source=search&guid=bd9e9ef24eab4bf4ab023d328c5af21d&index=0>.

² Internet Corporation for Assigned Names and Numbers (ICANN), *History: ICANN’s Historical Relationship with the U.S. Government*, (last visited March 2, 2020), Available at <https://www.icann.org/en/history/icann-usg>.

³ ICANN, *Bylaws for Internet Corporation for Assigned Names and Numbers, A California Nonprofit Public-Benefit Corporation* (2019), last visited March 2, 2020, Available at <https://www.icann.org/resources/pages/governance/bylaws-en>.

⁴ U.S. Dep’t of Commerce, National Telecommunications and Information Administration (NTIA), *Press Release: NTIA Announces Intent to Transition Key Internet Domain Name Functions*, (2014), <https://www.ntia.doc.gov/press-release/2014/ntia-announces-intent-transition-key-internet-domain-name-functions>.

⁵ Sen. Ted Cruz, *Press Release: Don’t Let Obama Give Away the Internet* (2016), https://www.cruz.senate.gov/?p=press_release&id=2782 and Rep. Greg Walden, *Press Release: Greg Walden Leads Hearing on Global Internet Freedom, Administration’s Proposal to Transfer Domain Name Oversight* (2014), <https://walden.house.gov/media-center/press-releases/greg-walden-leads-hearing-global-internet-freedom-administrations>.

⁶ L. Gordon Crovitz, Wall Street Journal, *The Battle Over Obama’s Internet Surrender*, June 13, 2016, <https://www.wsj.com/articles/the-battle-over-obamas-internet-surrender-1465770111>.

⁷ Dave Lee, BBC, *Has the U.S. Just Given Away the Internet?*, Oct. 1, 2016, <https://www.bbc.com/news/technology-37527719> and Howard Fischer, Arizona Daily Star, *Arizona Joins Lawsuit Saying U.S. Giving Up Control of the Internet*, Sept. 29, 2016, https://tucson.com/business/national-and-international/arizona-joins-lawsuit-saying-us-giving-up-control-of-internet/article_db390514-5cd4-5ef4-ad8e-2c75070e642f.html.

⁸ Alan Fram, Associated Press, *GOP, Dems Clash Over Online Domain Name Oversight*, Apr. 10, 2014, <https://apnews.com/ae1f8d0a8b4a4b93bd9314b16ac56aeb>, and Robert K. Knake, Council on Foreign Relations, *Ted Cruz Wants to Shrink Government, Except When it Comes to the Internet*, May 18, 2016, <https://www.cfr.org/blog/ted-cruz-wants-shrink-government-except-when-it-comes-internet>, and Brendan Sasso, The Atlantic, *Obama Administration Denies ‘Abandoning the Internet*, Mar. 19, 2014, <https://www.theatlantic.com/politics/archive/2014/03/obama-administration-denies-abandoning-the-internet/457143/>.

⁹ The dissenting nations, comprised of the U.S., the U.K., Canada, and Australia, refused “to back a new treaty on the grounds it could be abused to affect internet governance, and by extension, content.” Dave Lee, BBC, *Has the U.S. Just Given Away the Internet?* Oct. 1, 2016, <https://www.bbc.com/news/technology-37527719>.

¹⁰ Jonathan Masters, Council on Foreign Relations, *What is Internet Governance?*, Apr. 23, 2014, <https://www.cfr.org/background/what-internet-governance>.

¹¹ Dustin Volz, Reuters, *Blocking Internet Oversight Transition a ‘gift to Russia’: Obama Administration*, Sept. 14, 2016, <https://www.reuters.com/article/us-usa-cyber-congress-idUSKCN11K26F>.

¹² Robert K. Knake, Council on Foreign Relations, *2019: The Beginning of the End of the Open Internet Era*, Jan. 6, 2020, <https://www.cfr.org/blog/2019-beginning-end-open-internet-era>.

¹³ *Id.*

¹⁴ Referring to the U.S., Mr. Peskov stated, “We all know who the chief administrator of the global Internet is. And due to its volatility,

we have to think about how to ensure our national security.” Tracy Staedter, Institute of Electrical and Electronics Engineers, IEEE Spectrum, *Why Russia is Building its Own Internet*, Jan. 17, 2018, <https://spectrum.ieee.org/tech-talk/telecom/internet/could-russia-really-build-its-own-alternate-internet>.

¹⁵ CNN Business, *Russia Rolls Out its ‘Sovereign Internet.’ Is it Building a Digital Iron Curtain?*, Nov. 1, 2019, <https://www.cnn.com/2019/11/01/tech/russia-internet-law/index.html>, and Ciara Nugent, TIME, *Russians Rally Against Plan for an ‘Online Iron Curtain,’* Mar. 14, 2019, <https://time.com/5551323/russians-protest-online-iron-curtain/>.

¹⁶ Alexandra Ma, Business Insider, *Russia Officially Introduced a ‘Sovereign Internet’ Law to Let Putin Cut Off the Entire Country From the Rest of the Web*, Nov. 1, 2019, <https://www.businessinsider.com/russia-sovereign-internet-law-cut-web-access-censorship-2019-11>, and BBC News, *Russia Internet: Law Introducing New Controls Comes Into Force*, Nov. 1, 2019, <https://www.bbc.com/news/world-europe-50259597>.

¹⁷ *Id.*

¹⁸ Shannon Van Sant, Nat’l Public Radio, *Russia Criminalizes the Spread of Online News Which ‘Disrespects’ the Government*, Mar. 18, 2019, <https://www.npr.org/2019/03/18/704600310/russia-criminalizes-the-spread-of-online-news-which-disrespects-the-government>.

¹⁹ Brian Turner, TechRadar, *Russia Just Disconnected Itself From the Internet*, Dec. 26, 2019, <https://www.techradar.com/news/russia-just-disconnected-itself-from-the-internet>.

²⁰ Freedom House, *Freedom on the Net 2018, China*, last visited Mar. 2, 2020, <https://freedomhouse.org/report/freedom-net/2018/china>.

²¹ Kieren McCarthy, The Register, *China’s New Rules May Break the Internet Warns U.S. Government*, May 16, 2016, https://www.theregister.co.uk/2016/05/16/chinas_new_rules_may_break_the_internet_warns_us_government/.

²² Robert K. Knake, Council on Foreign Relations, *2019: The Beginning of the End of the Open Internet Era*, Jan. 6, 2020, <https://www.cfr.org/blog/2019-beginning-end-open-internet-era>.

²³ Lennard G. Kruger, Cong. Research Serv., R44042, *The Future of Internet Governance: Should the United States Relinquish its Authority over ICANN?* (2016)

<https://www.crs.gov/Reports/R44022?source=search&guid=bd9e9ef24eab4bf4ab023d328c5af21d&index=0>, and Lennard G. Kruger, Cong. Research Serv., R42351, *Internet Governance and the Domain Name System: Issues for Congress* (2016)

<https://www.crs.gov/Reports/R42351?source=search&guid=4aa7e2b98f264cdd809052dbd1c7f22d&index=0>

<https://www.crs.gov/Reports/R44022?source=search&guid=bd9e9ef24eab4bf4ab023d328c5af21d&index=0>.

²⁴ Sen. Elizabeth Warren, *Plans: Fighting Digital Disinformation*, Jan. 29, 2020 (last visited Mar. 2, 2020), <https://elizabethwarren.com/plans/fighting-digital-disinformation?source=soc-WB-ew-tw-rollout-20200129>.

²⁵ Holly Ellyatt, CNBC, *Russian Court Blocks Popular Messaging App in Privacy Row*, Apr. 13, 2018, <https://www.cnn.com/2018/04/13/russian-court-blocks-popular-messaging-app-in-privacy-row.html>.



MAINTAIN PEACE THROUGH AMERICAN MILITARY STRENGTH

The United States faces the most diverse range of serious threats than at any point in our history.¹ Every domain of warfare poses new challenges to America’s military competitive advantage.² Protecting the country from these threats is the first duty of the government, and each requires the United States to maintain the most lethal, agile, and robust military in the world.

BACKGROUND

Adversarial nations like Russia and China continue to intimidate their neighbors and rewrite international norms to America’s detriment. Iran and North Korea continue efforts to exert covert influence and destabilize operations in the Middle East and Asia. ISIS and al Qaeda are under pressure and, though they have lost most of their physical territory, they continue to pose a threat.³

In addition to these global threats, America’s defense capabilities face federal policy headwinds as well. Years of inadequate and delayed budgets during President Barack Obama’s tenure combined with increased deployments and operations created a military readiness crisis. During President Obama’s tenure in office (FY2010 to FY2016), Department of Defense spending adjusted for inflation declined by 23 percent.⁴ According to Mackenzie Eaglen of the Marilyn Ware Center for Security Studies at the American Enterprise Institute, lack of military readiness due to funding constrictions explains the many years military training fatalities outpaced deaths in combat.⁵ Despite efforts from Republicans in Congress, defense spending as a percent of gross domestic product remains at historic lows.⁶

DOD Outlays as a Percent of Gross Domestic Product (GDP) FY1953-FY2025



Peace Through Strength

As President Ronald Reagan stated in March 1983, “We maintain our strength in order to deter and defend against aggression—to preserve freedom and peace.”⁷ In that spirit, former President Donald Trump released the National Defense Strategy in 2018 prioritizing competition with other global powers to address threats from Russia and China.⁸ To restore military readiness and maintain our competitive edge, senior commanders have testified that the Pentagon budget must grow by 3 to 5 percent above inflation through 2025.⁹

With the support of Congressional Republicans, the Trump administration worked to restore readiness and began making key investments in the 21st century capabilities—like hypersonics, 5G, Artificial Intelligence, missile defense, and a modernized nuclear deterrent— America will need to maintain its competitive edge.

Russia and China are aggressively modernizing their militaries. Russia planned to spend \$28 billion in 2020 to modernize its nuclear triad in addition to investing in six new strategic weapons systems. China is on track to build a 420-ship navy by 2035 that will be the world’s largest.¹⁰ According to former acting Secretary of Defense Patrick Shanahan, “Accounting for purchasing power and the significant portion of our military budget going to pay and benefits, today, China’s defense spending approaches that of the United States.”¹¹

American Troops Deserve the Best

Former Congressman Mac Thornberry (R-TX), who was ranking member of the House Armed Services Committee, has said, “It is morally wrong to send men and women out on missions, even routine patrols, without the best equipment, the best training, the best support that our country can provide.”¹² According to the Congressional Research Service (CRS), America’s military has begun thirteen of the past eighteen years under a continuing resolution (CR). Since 2010, our troops have had to contend with wasteful and inefficient stopgap funding for 39 months.¹³ The Navy has calculated that they wasted \$4 billion between 2011 and 2017 as a result of the CRs.¹⁴ This, together with successive years of addressing global threats with inadequate budgets, contributes to a fatal readiness crisis in America’s military.

The Military Times found that while total aviation accidents fell for the first time since 2013’s budget cuts, military aviation deaths hit a six year high in 2018.¹⁵ While Congress may have arrested the readiness crisis, it “cannot undo decades of degradation in just a few years.”¹⁶

A Strong Economy Depends on a Strong Military¹⁷

American economic prosperity and our national security are critically linked. A strong, vibrant economy is critical to produce the revenues necessary to fund our military. Economic growth and innovation ensure that our military technology stays ahead of authoritarian, directed economies like China’s that can force a whole- of-nation effort against us.

A strong military is also an essential prerequisite to a healthy economy and to our quality of life. Since World War II, the rules-based international order created and maintained by the United States has benefited peoples around the globe and none more so than Americans here at home.

American’s military power also to guarantees freedom of navigation in the sea and in the air for the United States and its allies. It also serves to maintain fair, enforceable international rules that give American companies and workers a fair chance to compete.

A deteriorating military adds fuel to China’s narrative that America is a nation in decline so that Asian nations would do better to enlist in China’s alternative economic and military order. If China sets the rules for much of the world’s economy, America will feel the consequences in its pocketbook as well as to its security.

POLICY SOLUTIONS

Provide Sufficient and Timely Funding

To maintain our competitive edge, our military requires sufficient funding to execute the National Defense Strategy. Because of the outsized damage CRs can do to military readiness, Congress must return to regular order appropriations in both the House and the Senate.

Embrace Ongoing Fiscal Reforms

Congress must conduct oversight of Pentagon processes and practices to ensure taxpayer resources are being used effectively and that the Department of Defense (DOD) is agile, maintains its competitive edge, and supports our troops and their families. Since 2014, Republicans have led the way in dozens of reforms including streamlining acquisition statutes and regulations, an updated military retirement system, and improved health care system, a sustainable commissary benefit, an overhaul of the UCMJ, and a major shakeup of the Pentagon's bureaucracy and business processes.

Audit the Department of Defense

The Chief Financial Officers Act of 1990 requires annual financial audits of federal agencies' financial statements. This is a law the DOD has struggled to comply with until recently. Republicans held the DOD accountable, and the DOD completed its first-ever agency-wide financial audit in FY2018. It completed a FY2019 audit in January 2020. While the DOD received an agency-wide disclaimer of opinion, DOD is on track to receive a clean audit opinion in the next 10 years. Congress should use the audits as the foundation to drive additional reforms across the DOD.

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¹ Kissinger, Henry, Opening Statement before the Senate Armed Services Committee, January 29, 2015.

² General James Mattis testimony before House Armed Services Committee (HASC), 6/12/17, <https://docs.house.gov/meetings/AS/AS00/20170612/106090/HHRG-115-AS00-Bio-MattisJ-20170612.pdf>.

³ U.S. Department of Defense (DOD), National Defense Strategy Summary, <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>.

⁴ Office of Management and Budget, A Budget for America's Future – President's Budget, FY 2021, Table 4.1 – Outlays by Agency: 1962 – 2025 (2021).

⁵ Mackenzie Eaglin, America's New Deadliest War is Hiding in Plain Sight, RealClearPolitics, 9/7/17, https://www.realcleardefense.com/articles/2017/09/07/americas_new_deadliest_war_is_hiding_in_plain_sight_112244.html.

⁶ DOD FY2020 Budget Slides, https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_Budget_Request_Overview_Book.pdf.

⁷ Ronald Reagan, Address to the Nation, Ronald Reagan, 3/23/83: <http://www.atomicarchive.com/Docs/Missile/Starwars.shtml>

⁸ DOD, National Defense Strategy, 2018, <https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf>.

⁹ General Joseph Dunford, Chairman of the Joint Chiefs of Staff, Brookings Institution, May 28, 2019 <https://www.brookings.edu/events/a-conversation-with-chairman-of-the-joint-chiefs-of-staff-general-dunford/>

¹⁰ HASC hearing entitled DOD's Role in Competing with China, January 15, 2020.

¹¹ Acting Secretary of Defense Patrick Shanahan, Testimony before HASC, March 26, 2019, <https://docs.house.gov/meetings/AS/AS00/20190326/109163/HHRG-116-AS00-Wstate-ShanahanP-20190326.pdf>.

¹² Rep. Mac Thornberry, Thornberry: Budget Control Act Limits on Defense Spending Could End Soon, USNI News, September 6, 2017, <https://news.usni.org/2017/09/06/thornberry-budget-control-act-limits-defense-spending-end-soon>

¹³ Congressional Research Service, Defense Spending Under an Interim Continuing Resolution, August 15, 2019, <https://crsreports.congress.gov/product/pdf/R/R45870>.

¹⁴ Lauren Williams, Navy research funds could see scrutiny, secretary says, Federal Computer Week, October 24, 2019, <https://fcw.com/articles/2019/10/24/navy-spencer-cr-williams.aspx>.

¹⁵ Tara Copp, Is military aviation getting any safer? New mishap data shows mixed results, Military Times, April 8, 2019, <https://www.militarytimes.com/news/your-military/2019/04/09/is-military-aviation-getting-any-safer-new-mishap-data-shows-mixed-results/>

¹⁶ General Joseph Dunford, Chairman of the Joint Chiefs of Staff, Testimony before HASC, March 26, 2019, <https://docs.house.gov/meetings/AS/AS00/20190326/109163/HHRG-116-AS00-Wstate-DunfordJ-20190326.pdf>

¹⁷ Rep. Mac Thornberry, Rep. Mac Thornberry: We need a strong vibrant economy to fund our military, Fox News, February 26, 2018, <https://www.foxnews.com/opinion/rep-mac-thornberry-we-need-a-strong-vibrant-economy-to-fund-our-military>



MODERNIZE OUR NUCLEAR TRIAD & MISSILE DEFENSE SYSTEMS

Ensuring a safe, effective, and reliable nuclear deterrent is the military's top priority and the cornerstone of America's national security. However, Russia and China are making significant investments in developing and deploying new nuclear weapons, even as America's nuclear arsenal ages.¹

BACKGROUND

America's land-based intercontinental ballistic missiles (ICBMs), submarine-launched ballistic missiles, and bombers form America's nuclear deterrent also known as the "Nuclear Triad."² The Nuclear Triad ensures America's ability to deliver a "decisive response, anywhere, anytime" in the event of a catastrophic first strike by an adversary.³

The United States built most of these weapon systems in the 1980s. As such, many have been extended well beyond their service lives. Even with extensions, these systems will reach the end of their service lives between 2025 to 2035. This leaves little time to get modern replacement systems online, and no margin for error. The United States must make significant investments over the next 20 years to modernize the deterrent, but at no point is the cost expected to be greater than 7 percent of the DOD budget.⁴ As Ash Carter, President Obama's Secretary of Defense said, "It's not an enormous part of our budget, but it is a critical part of our budget."⁵ Former Secretary Mattis put it more succinctly, "America can afford survival."⁶

China and Russia

China and Russia are rapidly modernizing their own nuclear arsenals. China is investing in long-range bombers that could make it one of three countries in the world with a nuclear triad. China is also building out a robust arsenal of missiles designed to deny the United States and our allies access in the Indo-Pacific.

Russia spent more than 10 percent of its military budget on nuclear modernization every year since 2011.⁷ In 2018, President Vladimir Putin announced six new strategic weapons systems. Five of them are nuclear capable.⁸

Low-Yield Weapons

The U.S. recently deployed new low-yield nuclear weapons to reinforce America's nuclear deterrent. Opponents of these weapons, including many House Democrats, argue that they are destabilizing and increase the potential for nuclear war.⁹ In reality, they are a deterrent to Russia's dangerous "escalate to de-escalate" theory that calls for the use of Russian low-yield weapons in a limited attack, betting that the United States would not respond disproportionately with one of our high-yield weapons. These new low-yield weapons deter the threat of limited first use because the United States would be able to respond proportionally.¹⁰ President Obama's Defense Science Board recommended deploying new low-yield weapons because, according to Dr. Mark Schneider, "it plugs a major hole in our current deterrent capability at virtually no cost."¹¹

Missile Defense

Republicans have championed strong missile defenses to protect the American homeland as well as to protect our partners and allies. While rogue nations like North Korea and Iran develop missiles capable of delivering nuclear weapons to the United States, robust layered missile defense capabilities are critical to our national security. For

regional missile threats in Asia, Europe, and the Middle East, the United States has pursued capabilities that will protect our deployed troops, partners, and allies from near peer and rogue nations alike. The U.S. continues to work with Israel in the cooperative development of missile defense capabilities which are essential to their safety and security. In addition, a robust missile defense research and development effort must address emerging threats from hypersonic weapons, cruise missiles, and other novel systems under development. Missile defense is a critical part of America's deterrence calculus.

Withdrawing From The INF Treaty

The United States completed withdrawal from the Intermediate-Range Nuclear Forces (INF) Treaty in August of 2019. The INF Treaty was established in 1987 and led to the elimination of U.S. and Soviet ground-launched cruise missiles with ranges between 500 and 5,500 kilometers.¹² Beginning in 2008, the Obama Administration raised concerns that Russia was testing missiles that could fly to ranges banned by the treaty. By 2014, the Obama Administration concluded that Russia had violated the treaty, "the most serious allegation of an arms control treaty violation that the Obama administration...leveled against Russia."¹³ Congress took action repeatedly to hold Russia accountable, but Russia refused to return to compliance.¹⁴

While Russia was testing banned missiles, China was developing their own arsenal of missiles unconstrained by the INF treaty. According to the US-China Commission, "Over the last two decades Beijing has built up a formidable missile arsenal outside the limits of the [INF Treaty]."¹⁵ Prior to INF Treaty withdrawal, the United States had no comparable capability due to INF restrictions, which put "the United States at a disadvantage and place[d] our forces at risk because China is not a signatory."¹⁶

POLICY SOLUTIONS

Congress must authorize sufficient funding to create effective deterrents to a catastrophic attack. In the 1960s, DOD spent approximately 17.1 percent of its budget on the Nuclear Triad. In 1984, during the peak of the last modernization effort, DOD spent 10.6 percent of its budget on the project. Former President Trump's fiscal year (FY) 2021 Budget Proposal called for \$28.9 billion, or 3.9 percent of the total national defense budget request, on nuclear modernization. His proposal would spend 7 percent of the DOD budget at its peak. President Biden's FY 2022 Budget Proposal calls for \$27.7 billion for nuclear modernization.¹⁷

¹ Acting Secretary of Defense Patrick Shanahan, Testimony before HASC, March 26, 2019,

<https://docs.house.gov/meetings/AS/AS00/20190326/109163/HHRG-116-AS00-Wstate-ShanahanP-20190326.pdf>

² Department of Defense, America's Nuclear Triad, <https://www.defense.gov/Experience/Americas-Nuclear-Triad/>

³ Id.

⁴ Department of Defense, FY21 Budget Overview,

https://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2021/fy2021_Budget_Request_Overview_Book.pdf

⁵ Secretary of Defense Ash Carter, Testimony before the Senate Armed Services Committee, March 2016.

⁶ Phil Steward, Under Trump, future of U.S. nuclear arsenal slowly taking shape, Reuters, Sept. 14, 2017, <https://www.reuters.com/article/us-usa-military-nuclear/under-trump-future-of-u-s-nuclear-arsenal-slowly-taking-shape-idUSKCN1BP04D>

⁷ Shanahan, *supra*, note 1.

⁸ Id.

⁹ Rep. Adam Smith, Smith Criticizes the Administration's Deployment of W76-2 Low-Yield Nuclear Warheads, February 4, 2020,

<https://armedservices.house.gov/press-releases?ID=B4D7CA1E-45CB-4C0A-9D56-A8E832D48D15>.

¹⁰ Undersecretary of Defense for Policy John Rood, Statement on the Fielding of the W76-2 Low-Yield Submarine Launched Ballistic Missile Warhead, February 4, 2020, <https://www.defense.gov/Newsroom/Releases/Release/Article/2073532/statement-on-the-fielding-of-the-w76-2-low-yield-submarine-launched-ballistic-m/>

¹¹ Mark B. Schneider, Deterring Russian First Use of Low-Yield Nuclear Weapons, RealClearDefense, March 12, 2018, https://www.realcleardefense.com/articles/2018/03/12/deterring_russian_first_use_of_low-yield_nuclear_weapons_113180.html

¹² Arms Control Association, U.S. Withdrawal from the INF Treaty: What You Need to Know, <https://www.armscontrol.org/pressroom/2019-07/us-withdrawal-inf-treaty-what-you-need-know>

¹³ Michael R. Gordon, U.S. Says Russia Tested Cruise Missile, Violating Treaty, New York Times, July 28, 2014, https://www.nytimes.com/2014/07/29/world/europe/us-says-russia-tested-cruise-missile-in-violation-of-treaty.html?partner=rssnyt&emc=rss&_r=1

¹⁴ House Armed Services Committee Republicans, INF Withdrawal a Long Time Coming, October 25, 2018, <https://republicans-armedservices.house.gov/news/defense-drumbeat/hasc-fact-sheet-inf-withdrawal-long-time-coming>.

¹⁵ Id.

¹⁶ Admiral Philip Davidson, Advance Policy Questions for Admiral Philip Davidson, USN Expected Nominee for Commander, U.S. Pacific Command, Senate Armed Services Committee, April 17, 2018, https://www.armed-services.senate.gov/imo/media/doc/Davidson_APQs_04-17-18.pdf

¹⁷ <https://www.defense.gov/News/Releases/Release/Article/2638711/the-department-of-defense-releases-the-presidents-fiscal-year-2022-defense-budg/>



BIDEN'S RETURN TO HYPER-REGULATION

Currently, federal regulations are estimated to cost American businesses and consumers over \$1.9 trillion annually.¹ The Obama Administration alone issued over \$890 billion in new regulatory costs.² The Trump Administration took action to reduce this burden by eliminating \$198.6 billion in regulatory costs, which average \$1,546 for every American household, and waiving restrictive regulations during the COVID-19 pandemic.³ Unfortunately, on his first day in office, President Biden abandoned the path to reducing red tape and cemented a return to increased burdensome government regulations, despite the many harmful consequences on Americans.

- **Revoking the deregulatory and transparency efforts of the Trump Administration.**
 - President Biden's Executive Order 13992 revoked numerous executive orders from the Trump Administration, such as: the order reducing regulation and regulatory costs, also known as the one-in, two-out rule; the order improving the transparency of agency guidance, which provides clarifying information for these regulations; and the order enforcing those reforms.⁴
 - The regulatory cost caps put in place by the Trump Administration largely served to limit the overall burden of regulations, since this burden is estimated to slow economic growth by 0.8 percent per year, amounting to over a trillion dollars of lost output in the last decade. For example, this slowing of economic growth between 1980 and 2012 amounts to a loss of \$13,000 for every American.⁵
 - The most partisan revocation is likely on the order improving transparency of agency guidance, which was previously supported on a bipartisan basis.⁶ Agency guidance, not just regulations, affect Americans in their everyday lives, such as the Biden Administration order requiring individuals to wear masks on all public transportation.⁷
- **Incentivizing agencies to inflate benefits of regulations to promote political interests.**
 - The Biden "Modernizing Regulatory Review" memorandum reaffirms Executive Order 12866 from the Clinton Administration, which watered down the Reagan Administration cost-benefit analysis standard of benefits needing to "exceed" costs, to simply having the benefits "justify" the costs.⁸
 - The memorandum states the review process should fully account for and maximize regulatory benefits that are difficult or impossible to quantify. Therefore, this encourages benefits to be inflated while neglecting to assess costs in the same manner, giving even more power to the regulatory state.⁹
 - Additionally, the memorandum explicitly states that these changes should serve to "affirmatively promote regulations" that advance the Biden Administration's vaguely articulated political goals, such as social welfare, racial justice, human dignity, and equity.¹⁰
- **Congress should reclaim its lawmaking power from federal agencies.**
 - Over the years, Congress has continued to delegate its lawmaking authority under Article One of the Constitution to federal agencies. The legislative branch should fully restore its lawmaking authority, while the executive branch performs its proper role of enforcing these laws.¹¹
 - Congress should also support additional oversight and transparency of existing regulations by requiring retrospective review of regulations to determine if there is evidence that the benefits of the regulation continue to outweigh its costs and that it accomplishes Congress's intended effect.

- ¹ Clyde Wayne Crews. Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State. Competitive Enterprise Institute. 2017. <https://cei.org/sites/default/files/Ten%20Thousand%20Commandments%202017.pdf>
- ² Sam Batkins. Midnight Regulations Push Obama Administration's Regulatory Tally Past \$890 Billion. American Action Forum. February 2, 2017. <https://www.americanactionforum.org/insight/midnight-regulations-push-obama-administrations-regulatory-tally-past-890-billion/>
- ³ Regulatory Reform under Executive Order 13771: Final Accounting for Fiscal Year 2020. Office of Information and Regulatory Affairs. 2020. https://www.reginfo.gov/public/pdf/eo13771/EO_13771_Final_Accounting_for_Fiscal_Year_2020.pdf; Historical Household Tables. United States Census Bureau. December 2020. <https://www.census.gov/data/tables/time-series/demo/families/households.html>; Numerous harmful regulations were waived under the Trump Administration during the COVID-19 crisis, such as allowing doctors to provide telehealth services to Medicare patients to provide flexibility to healthcare providers. COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers. Centers for Medicare & Medicaid Services. February 19, 2021. <https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf>
- ⁴ Executive Order 13992: Revocation of Certain Executive Orders Concerning Federal Regulation. Federal Register. January 20, 2021 <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01767.pdf>
- ⁵ Bentley Coffey, Patrick McLaughlin, and Pietro Peretto. The Cumulative Cost of Regulations. The Mercatus Center. April 26, 2016. <https://www.mercatus.org/publications/regulation/cumulative-cost-regulations>
- ⁶ Peter R. Orszag. Memorandum for the Heads and Acting Heads of Executive Departments and Agencies. Office of Management and Budget. March 4, 2009. https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/memoranda_fy2009/m09-13.pdf and Senator Ron Johnson, et al. February 8, 2021. <https://www.portman.senate.gov/sites/default/files/2021-02/2021-02-08-letter-to-president-biden-re-eo-13891-.pdf>
- ⁷ Martin S. Cetron. M.D. Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs. January 29, 2021. https://www.cdc.gov/quarantine/pdf/Mask-Order-CDC_GMTF_01-29-21-p.pdf
- ⁸ Executive Order 12866: Regulatory Planning and Review. Federal Register. September 30, 1993. https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf and Clyde Wayne Crews. A Look at "Modernizing Regulatory Review." Competitive Enterprise Institute. January 21, 2021. <https://cei.org/blog/a-look-at-modernizing-regulatory-review/>
- ⁹ Modernizing Regulatory Review. Federal Register. January 26, 2021. <https://www.federalregister.gov/documents/2021/01/26/2021-01866/modernizing-regulatory-review>
- ¹⁰ Modernizing Regulatory Review. Federal Register. January 26, 2021. <https://www.federalregister.gov/documents/2021/01/26/2021-01866/modernizing-regulatory-review>
- ¹¹ See also the House Republican Policy Committee policy guide, 116th Congress, entitled "Create Congressional Accountability for Major Rules," accessed here <https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/33%20-%20Create%20Congressional%20Accountability%20for%20Major%20Rules.pdf>.



PROTECT LANDLORDS FROM FINANCIAL RUIN

“We’re drowning.”¹ “I’m broke. I’m eating from the food pantry.”² “We are having everything cut out from beneath us.”³ While one may guess these are quotes from tenants struggling to pay their rent, these are actually quotes from small landlords who had to shoulder the burden of missed rental payments since the eviction moratorium was established in 2020 at the beginning of the COVID-19 pandemic.

In response to the strain the pandemic put on renters and landlords, Congress appropriated more than \$46 billion in aid through the Emergency Rental Assistance (ERA) programs, but only a small percentage of this aid has been disbursed.⁴ Despite obvious problems with the disbursement of ERA funds, numerous Democrats advocated for extending the moratorium again, even after the Supreme Court struck down the Centers for Disease Control and Prevention (CDC) order halting evictions on August 3, 2021.⁵ Rather than exacerbating the burden on small landlords, Congress should address the mismanaged ERA programs, as Republicans have advocated for months, to distribute the previously-approved aid to those most in need.⁶

- **The eviction moratorium kept renters in homes while punishing millions of small landlords**
 - The CDC order halting rent payments did not erase the financial problems of the renters. Instead, it shifted the financial burden of months of missed rental payments to the landlords, who may then be unable to pay their mortgage, property taxes, or other expenses.
 - Despite public perception, nearly 20 million of America’s 48 million rental units are owned and managed by individuals rather than larger property owners, and more than half of back rent is owed to smaller landlords.⁷
 - As of early September 2021, about 8.2 million households are behind on rent, amounting to over \$14 billion.⁸
- **The moratorium had numerous harmful ripple effects that hurt tenants.**
 - While the order temporarily prevented evictions, it was not a rent exemption. Renters will have to pay landlords back for any missed payments in addition to any fees, penalties, or interest that have accumulated due to these missed payments.
 - Many landlords have cited that without rental payments, they are unable to keep the rental properties in good or even safe condition for tenants, leaving them in a state of disrepair.⁹
 - Due to missed rental payments, landlords may raise rent on other tenants to recoup losses or fire employees who work at the rental properties if they lack the funds to pay them.¹⁰
 - Some landlords resorted to keeping properties vacant out of fear of a tenant not paying and being unable to cover expenses, which could lead to housing shortages.¹¹
- **Little recourse has been given to landlords.**
 - The CDC order simply required tenants to attest that they cannot make rental payments without proof, allowing for tenants to miss rental payments even if they are able to pay them.¹²
 - While the ERA programs are intended to provide aid to renters and landlords, tenants with overdue rent must be willing to apply for funds or co-sign a landlord’s application, which landlords cite numerous tenants have refused to do while the eviction moratorium was still in place.¹³

- Further, since the ERA program requires landlords in some states who accept even partial funds to not evict for a certain period of time, many landlords are forgoing accepting the aid, arguing that it prevents them from potentially removing problematic tenants.¹⁴

POLICY SOLUTIONS

Rather than continuing to compound the pain on America's renters and landlords, Congress should improve the existing ERA programs by ensuring the aid already allocated for renters is disbursed in a more efficient manner without exposing it to waste, fraud, and abuse. Further, funds should be targeted to paying off overdue rent owed to landlords, rather than forward looking rental assistance or other uses. Enacting H.R. 3913, the Renter Protection Act of 2021, would help accomplish these objectives.¹⁵

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¹ Katy O'Donnell. Suffering landlords are Washington's new eviction problem. Politico. August 14, 2021.

<https://www.politico.com/news/2021/08/14/landlords-covid-eviction-ban-504472>

² Eli Saslow. The battle for 1042 Cutler Street. The Washington Post. May 1, 2021.

<https://www.washingtonpost.com/nation/2021/05/01/landlord-tenant-eviction-moratorium-pandemic/>

³ Michael Casey and Anne D'Innocenzio. Landlords look for an exit amid federal eviction moratorium. AP News. August 19, 2021.

<https://apnews.com/article/lifestyle-business-health-coronavirus-pandemic-5f1a2b734a06eacad423298c1f0f6f3f>

⁴ Grant A. Driessen, Maggie McCarty, and Libby Perl. Pandemic Relief: The Emergency Rental Assistance Program. Congressional Research Service. September 8, 2021. <https://crsreports.congress.gov/product/pdf/R/R46688> and Emma Colton. Nearly 90% of rental assistance funds not yet distributed. Fox Business. August 25, 2021. <https://www.foxbusiness.com/economy/rental-assistance-funds-not-yet-distributed> and <https://home.treasury.gov/news/featured-stories/more-than-420000-households-received-emergency-rental-assistance-in-august-totaling-over-2.3-billion-in-payments>

⁵ Alabama Association of Realtors v. Department of Health and Human Services. 594 U.S. __ (2021)

https://www.supremecourt.gov/opinions/20pdf/21a23_ap6c.pdf and Emma Colton. Nearly 90% of rental assistance funds not yet distributed. Fox Business. August 25, 2021. <https://www.foxbusiness.com/economy/rental-assistance-funds-not-yet-distributed> and Katy O'Donnell. Democrats rush to avert eviction calamity after ban is blocked. Politico. August 27, 2021.

<https://www.politico.com/news/2021/08/27/democrats-press-pelosi-schumer-to-revive-eviction-ban-507002>

⁶ Republicans Continue to Lead the Fight to Protect Renters, Democrats have no Solution. U.S. Committee on Financial Services. September 3, 2021. <https://republicans-financialservices.house.gov/news/documentsingle.aspx?DocumentID=408083>

⁷ Rental Housing Finance Survey: 2018 National – Ownership and Management. https://www.census.gov/data-tools/demo/rhfs/#/?s_tableName=TABLE2&s_byGroup1=6&s_type=2 and <https://www.cato.org/commentary/cdc-eviction-moratorium-epic-case-study-very-bad-policy> and <https://fortune.com/2021/08/22/new-eviction-ban-landlords-struggle-collect-unpaid-rent-tenants/>

⁸ Last Month's Payment Status for Renter-Occupied Housing Units. <https://www.census.gov/programs-surveys/household-pulse-survey/data.html#phase3.2> (accessed 9/24/21) and <https://nationalequityatlas.org/rent-debt> (accessed 9/24/21)

⁹ Michael Casey and Anne D'Innocenzio. The latest eviction ban is adding a new level of financial stress for landlords. Fortune. August 22, 2021. <https://fortune.com/2021/08/22/new-eviction-ban-landlords-struggle-collect-unpaid-rent-tenants/> and <https://www.washingtonpost.com/nation/2021/05/01/landlord-tenant-eviction-moratorium-pandemic/> and <https://apnews.com/article/lifestyle-business-health-coronavirus-pandemic-5f1a2b734a06eacad423298c1f0f6f3f>

¹⁰ Marc E. Fitch. The Fitch Files: Landlords see troubling future after eviction moratorium. Yankee Institute. July 30, 2021.

<https://yankeeinstitute.org/2021/07/30/the-fitch-files-landlords-see-troubling-future-after-eviction-moratorium/>

¹¹ Michael Casey and Anne D'Innocenzio. Landlords look for an exit amid federal eviction moratorium. AP News. August 19, 2021.

<https://apnews.com/article/lifestyle-business-health-coronavirus-pandemic-5f1a2b734a06eacad423298c1f0f6f3f>

¹² Centers for Disease Control: Eviction Order Declaration Form. https://www.cdc.gov/coronavirus/2019-ncov/communication/EvictionProtectDeclare_508.pdf and Federal Moratorium on Evictions for Nonpayment of Rent. August 2021. National Low Income Housing Coalition. https://nlihc.org/sites/default/files/National-Eviction-Moratorium_FAQ-for-Renters.pdf

¹³ Diana Olick. 'The eviction moratorium is killing small landlords,' says one, as a ban is extended another month. CNBC. June 25, 2021. <https://www.cnbc.com/2021/06/25/the-eviction-moratorium-is-killing-small-landlords-says-one.html> and Joseph Edgar. Understanding Emergency Rental Assistance for Landlords and Tenants. Forbes. January 27, 2021.

<https://www.forbes.com/sites/forbesrealestatecouncil/2021/01/27/understanding-emergency-rental-assistance-for-landlords-and-tenants/?sh=54ece6127826>

¹⁴ Will Parker. Why Some Landlords Don't Want Any of the \$50 Billion in Rent Assistance. The Wall Street Journal. March 19, 2021.

https://www.wsj.com/articles/why-some-landlords-dont-want-any-of-the-50-billion-in-rent-assistance-11616155203?mod=article_inline

¹⁵ Renter Protection Act of 2021, H.R. 3913, 117th Congress. (2021). <https://www.congress.gov/bill/117th-congress/house-bill/3913/text>



THE DANGER OF MANDATING ESG DISCLOSURES

On May 20, 2021, President Biden signed an Executive Order titled “Climate-Related Financial Risk,” that creates a framework for a whole-of-government approach to incorporate environmental “risks” into financial regulation and supervision.¹ On the 2020 Presidential campaign trail, President Biden supported requiring public companies to disclose details related to not just environmental, but also social and governance (ESG) “risks” to their operations and supply chains.² These ESG “risks” include a broad range of nonfinancial factors, such as carbon emissions and diversity quotas, that some believe companies should address when disclosing a company’s financial performance to investors and regulators.

Table 1: Examples of Environmental, Social, and Governance Factors

Environmental	Social	Governance
Climate change impacts and greenhouse gas emissions	Labor standards	Board composition
Energy efficiency	Human rights	Executive compensation
Renewable energy	Employee engagement	Audit committee structure
Air, water, resource depletion, or pollution	Customer satisfaction	Bribery and corruption
Waste management	Community relations	Whistleblower programs
Biodiversity impacts	Gender and diversity	Accident and safety management

Source: GAO analysis of documentation from the CFA Institute, Sustainable Accounting Standards Board, and Principles for Responsible Investment. | GAO-20-530

Prior to the signing of the Executive Order, the Securities and Exchange Commission (SEC) had already made this initiative a top priority by creating a Climate and ESG Task Force, inviting public comment on climate change disclosures, and launching a new page on its website focused on the latest information on ESG investing, among other steps.³ When SEC Commissioner Hester Peirce compared ESG assessments developed by private boards to *The Scarlet Letter*, she noted that they are being used as a weapon to publicly shame certain businesses.⁴ This shaming often targets businesses not politically favored by Democrats and has led to billion dollar lawsuits, lack of access to capital, and the booting of board directors.⁵ This all has the effect of fewer companies choosing to go public, leading to fewer investment opportunities for everyday Americans.

- **Democrats want to reshape the mission of the SEC to impose their political agendas.**
 - The SEC’s mission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. Democrats are reshaping the SEC’s mission by exploiting securities laws to advance their liberal social agenda by imposing burdensome regulations.⁶
 - While Commissioner Allison Herren Lee has argued disclosures on climate risks should be mandated by the SEC, issues related to environmental quality are under the jurisdiction of the Environmental Protection Agency (EPA) and beyond the SEC’s statutory authority. Federal securities laws are relatively narrow in scope, and Commissioner Elad Roisman has admitted that, “if I were to use the securities laws to pursue my own environmental and social vision for the world, I would be subordinating the SEC’s mission to my personally held objectives.”⁷

- **Establishing universal ESG metrics would be complex and invite bias.**

- In recent years, most companies have voluntarily chosen to provide information to their shareholders on non-financial, ESG topics, without being required to do so by government mandate. For example, 90% of S&P 500 companies voluntarily published sustainability reports in 2019.⁸
- As SEC Commissioners and other experts have noted, matters that fall under the category of an ESG risk are often subjective and evolving.⁹ This is reflected in the seven different ESG standard-setting organizations that create voluntary reporting frameworks, each containing different disclosure topics.¹⁰
- Depending on the approach chosen, the metric could favor certain companies over others based on subjective, moral judgements rather than financially material information that is currently required. For example, Tesla could be one of the highest or lowest ESG-rated automakers, depending on if the standard focuses on its environmental rating or its workers' rights rating.¹¹
- Certain disclosure requirements may be deemed relevant for some companies and not others depending on the nature of the business, but mandated disclosures creating a one-size-fits-all approach would create enormous and inequitable compliance burdens for companies.

- **Wall Street is fueling and profiting off the ESG movement.**

- While investors are exhibiting increased demand for ESG funds, the movement is increasingly being fueled by Wall Street, where fund managers and consultants are looking to line their own pockets whether it is in the best interests of investors or not.
- The profit is driven by larger fees charged by fund managers for ESG funds compared to the other broader funds. For example, exchange-traded funds (ETFs) solely focused on ESG investments have 43% higher fees than passive index ETFs, although they are not more expensive to run.¹² The fee difference could amount to over \$1 million for a firm managing a \$2 billion ESG fund.
- The interests of Wall Street are also reflected in the increased lobbying efforts in favor of ESG issues by investment managers, such as BlackRock, which put \$68 billion into ESG products last year.¹³
- Fueled by pecuniary interests, unions, public pension funds, and activist investors are coordinating to change companies' behavior toward political issues and reshape capitalism in America as we know it.

Congress must conduct oversight of the Administration and SEC's actions to ensure Democrats in Washington are not pushing their social agenda through an inappropriate vehicle such as securities laws. Instead of broad government mandates, companies should have the freedom to utilize voluntary metrics best-suited for their specific business and the interests of their shareholders.

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¹ Executive Order 14030: Climate-Related Financial Risk. Federal Register. May 25, 2021.

<https://www.federalregister.gov/documents/2021/05/25/2021-11168/climate-related-financial-risk>

² The Biden Plan for Clean Energy Revolution and Environmental Justice. <https://joebiden.com/climate-plan/>

³ SEC Announces Enforcement Task Force Focused on Climate and ESG Issues. U.S. Securities and Exchange Commission. March 4, 2021. <https://www.sec.gov/news/press-release/2021-42> and Commissioner Allison Herren Lee. Public Input Welcomed on Climate Change Disclosures. U.S. Securities and Exchange Commission. March 15, 2021. <https://www.sec.gov/news/public-statement/lee-climate-change-disclosures> and SEC Responds to Investor Demand by Bringing Together Agency Information About Climate Change and ESG Issues. U.S. Securities and Exchange Commission. March 22, 2021. https://www.sec.gov/news/press-release/2021-52?utm_medium=email&utm_source=govdelivery

⁴ Commissioner Hester M. Peirce. Scarlett Letters: Remarks before the American Enterprise Institute. U.S. Securities and Exchange Commission. June 18, 2019. <https://www.sec.gov/news/speech/speech-peirce-061819>

⁵ Laurel Wamsley. Exxon Is On Trial, Accused Of Misleading Investors About Risks Of Climate Change. NPR. October 22, 2019. <https://www.npr.org/2019/10/22/772241282/exxon-is-on-trial-accused-of-misleading-investors-about-risks-of-climate-change> and Swetha Gopinath. Poor ESG Profile Could Shut Off Access to Capital, Amundi Says. Bloomberg. October 28, 2020.

<https://www.bloomberg.com/news/articles/2020-10-28/poor-esg-profile-could-shut-off-access-to-capital-amundi-says> and Attracta Mooney. BlackRock punishes 53 companies over climate inaction. Financial Times. July 14, 2020. <https://www.ft.com/content/8809032d-47a1-47c3-ae88-ef3c182134c0>

⁶ About the SEC. U.S. Securities and Exchange Commission. <https://www.sec.gov/about.shtml>

⁷ Allison Herren Lee. Big Business's Undisclosed Climate Crisis Plans. The New York Times. September 27, 2020.

<https://www.nytimes.com/2020/09/27/opinion/climate-change-us-companies.html> and Commissioner Elad L. Roisman. Keynote Speech at the Society for Corporate Governance National Conference. U.S. Securities and Exchange Commission. July 7, 2020.

<https://www.sec.gov/news/speech/roisman-keynote-society-corporate-governance-national-conference-2020>

⁸ 90% of S&P 500 Index Companies Publish Sustainability Reports in 2019, G&A Announces in its Latest Annual 2020 Flash Report. Global Newswire. Jul 16, 2020. <https://www.globenewswire.com/news-release/2020/07/16/2063434/0/en/90-of-S-P-500-Index-Companies-Publish-Sustainability-Reports-in-2019-G-A-Announces-in-its-Latest-Annual-2020-Flash-Report.html>

⁹ Commissioner Elad L. Roisman. Keynote Speech at the Society for Corporate Governance National Conference. U.S. Securities and Exchange Commission. July 7, 2020. <https://www.sec.gov/news/speech/roisman-keynote-society-corporate-governance-national-conference-2020>

¹⁰ Public Companies: Disclosure of Environmental, Social, and Governance Factors and Options to Enhance Them. U.S. Government Accountability Office. July 2020. <https://www.gao.gov/assets/gao-20-530.pdf>

¹¹ Chris Flood. SEC chair warns of risks tied to ESG ratings. The Financial Times. May 27, 2020. <https://www.ft.com/content/2c662135-4fd3-4c1b-9597-2c6f8f17faed>

¹² Michael Wursthorn. Tidal Wave of ESG Funds Brings Profit to Wall Street. The Wall Street Journal. March 16, 2021. <https://www.wsj.com/articles/tidal-wave-of-esg-funds-brings-profit-to-wall-street-11615887004>

¹³ Andrew Ramonas. Democrats' ESG Drive Fuels Lobbying Bonanza in Washington. Bloomberg Law. May 3, 2021. <https://news.bloomberglaw.com/esg/democrats-esg-drive-fuels-lobbying-bonanza-in-washington> and Michael Wursthorn. Tidal Wave of ESG Funds Brings Profit to Wall Street. The Wall Street Journal. March 16, 2021. <https://www.wsj.com/articles/tidal-wave-of-esg-funds-brings-profit-to-wall-street-11615887004>



BIDEN'S WAR ON SUBURBS

- Democrats often advocate for sweeping government overhauls to housing, education, border security, and other matters that they would not personally choose to impose on their own families.
- President Biden's \$2.3 trillion infrastructure proposal would authorize the Department of Housing and Urban Development (HUD) to establish a program to award grants and tax credits to local governments that eliminate exclusionary zoning laws, which limit areas to certain types of land uses such as single-family homes.¹
- Under the proposal, local governments are enticed by HUD to allow apartment buildings in neighborhoods which are currently restricted to single-family homes.
- The Fair Housing Act protects an individual's right to buy and rent housing where they please, regardless of race or ethnicity.² Passing President Biden's proposed reform acts in contrast to the law by allowing Washington bureaucrats to dictate where and how people live.
- Affluent communities with the tightest zoning laws have little need for federal assistance and are, therefore, unlikely to participate in such government social engineering initiatives, undermining the stated goal of such programs.³ President Biden, for example, reportedly lives in an exclusive, four-acre lakefront home where there is "no public housing, affordable housing, or rentals that accept housing vouchers."⁴
- This proposal follows Biden's 2020 campaign pledge to reinstate an Obama-era rule called Affirmatively Furthering Fair Housing (AFFH). Under AFFH, Washington bureaucrats could override local single-family zoning regulations across the U.S., forcing suburbs to allow apartment buildings and other large developments.^{5,6}
- It is critical that American families of every race, creed, and background maintain the option to live wherever they choose. This is even more apparent as families flee America's Democrat-run cities that have descended into repeated riots, violence,⁷ lawlessness,⁸ and chronic homelessness.⁹

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¹ FACT SHEET: The American Jobs Plan | The White House, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/>

² 42 U.S.C. §§ 3601-19 (1968).

³ Reuters, "Biden seeks to ease housing shortage with \$5 billion 'carrot, no stick' approach," <https://www.reuters.com/article/us-usa-biden-infrastructure-zoning/biden-seeks-to-ease-housing-shortage-with-5-billion-carrot-no-stick-approach-idUSKBN2BV1CX>

⁴ Washington Examiner, “Biden administration squeezing suburbs out of existence with zoning laws,” <https://www.washingtonexaminer.com/news/biden-squeezing-suburbs-existence-zoning-laws>

⁵ Federal Register, Affirmatively Furthering Fair Housing, 24 CFR, July 16, 2015.

⁶ National Review, “Massive Government Overreach: Obama’s AFFH Rule is Out,” July 8, 2015, <https://www.nationalreview.com/corner/massive-government-overreach-obamas-affh-rule-out-stanley-kurtz/>

⁷ CBS News, “New York City sees 166% increase in shootings last month compared to August last year,” Sept. 3, 2020, <https://www.cbsnews.com/news/new-york-city-shootings-august-increase-166-percent/>.

⁸ Daily Caller, “Portland DA Says Protesters Won’t Be Charged With Harassment, Rioting Under New Policy,” Aug. 12, 2020, <https://dailycaller.com/2020/08/12/portland-protesters-mike-schmidt-no-charges-policy/>

⁹ “How California Homelessness Became A Crisis : Planet Money : NPR,” <https://www.npr.org/sections/money/2021/06/08/1003982733/squalor-behind-the-golden-gate-confronting-californias-homelessness-crisis>

MINIMIZE FINANCIAL SECTOR REGULATORY OVERLOAD

Accumulation of federal regulations over the past 30 years is estimated to cost the United States economy trillions of dollars annually, diverting resources from the financial industry and other regulated entities.¹ The Federal Government must adopt open data and regulatory technology (RegTech) solutions to harmonize onerous requirements and reduce compliance costs.

BACKGROUND

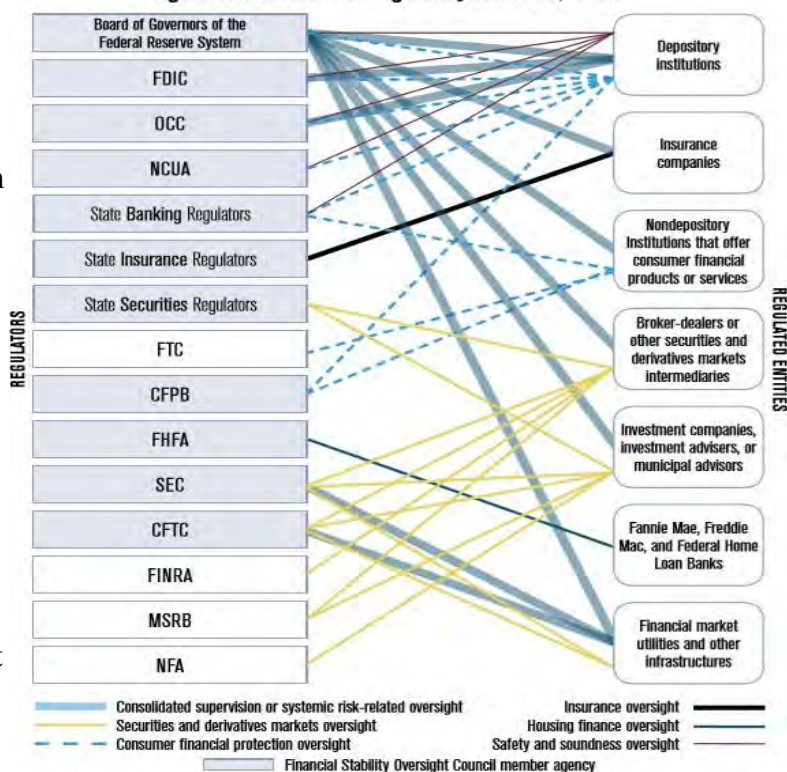
Federal regulations have accumulated over many decades, leading to “duplicative, obsolete, conflicting, and even contradictory rules.”² Less than one percent of federal rules receive a regulatory cost-benefit analysis,^{3,4} which serves as “the primary analytical tool to inform specific regulatory decisions.”⁵ In 2014, the former Director of Regulatory Policy at the American Action Forum stated, “The most significant regulatory burdens do not arise merely because of a single rule. Rather, businesses and individuals must confront the cumulative effects of a variety of regulations issued by different agencies across separate administrations.”⁶

The 2008 recession demonstrated that fragmentation across the U.S. financial regulatory apparatus threatens the growth, stability, and oversight of the economy.⁷ Consequently, the Government Accountability Office (GAO) has issued systemic modernization recommendations on its annual *High-Risk List* report every year since 2009.⁸ Currently, the financial services industry consists of “more than 13,000 banks and credit unions, payment companies, insurance companies, wealth and asset managers and financial market utilities that process transactions, payments and move money across domestic and international markets.”⁹ As Figure 1 shows, U.S. financial institutions must comply with multiple overlapping federal and state regulators.^{10,11}

Modernizing the financial regulatory structure requires reforming federal information management practices through open data policies. Currently, most financial regulators “do not use data standards to organize the information they collect from regulated entities,” and rely on antiquated, paper-based documentation and inconsistent reporting.¹²

In a 2017 report to the President, the Department of Treasury recommended congressional and executive action to reduce “critical” regulatory overlap and duplication in the financial sector. The Treasury Department’s report

Figure 1: U.S. Financial Regulatory Structure, 2016



called on financial agencies to adopt a standardized data field known as a Legal Entity Identifier in order to identify the regulated entities that report to them.¹³

Modernizing the Federal Government's regulatory structure requires reforming federal information management practices through open data policies. The Data Foundation defines "open data" as "the idea that information should be both electronically-standardized and freely-available."¹⁴ Open data generally features three main pillars: 1) Standardize data in open formats; 2) Publish or share the data to ensure it is accessible; and 3) Use – or leverage – the data to inform public and private decision-making.¹⁵

In 2013, the Office of Management and Budget (OMB) released a memo recognizing open data as "a valuable natural resource and a strategic asset to the U.S. Government, its partners, and the public...[which] strengthens our democracy and promotes efficiency and effectiveness in government, but also has the potential to create economic opportunity and improve citizens' quality of life."^{16, 17} In 2018, the President's Management Agenda featured open data under cross-agency priority (CAP) goal #2, "Leveraging Data As a Strategic Asset."¹⁸

The U.S. Congress has continued efforts to modernize federal information management practices by enacting two major open data laws: The Digital Accountability and Transparency Act (DATA) of 2014,¹⁹ and the Foundations for Evidence-Based Policymaking (or the "Evidence Act") Act of 2018.²⁰

- The DATA Act, the first national open data law, requires Treasury and OMB to establish government-wide data standards of federal spending data. This data is published in a public database at *USAspending.gov*.
- The Evidence Act required federal agencies to publish and provide public access to government data assets in a machine-readable format to the public. The law also established the role of Chief Data Officers (CDO) across federal agencies to implement and oversee data governance requirements.

In December 2019, OMB issued the "Year-1 Action Plan" of the first government-wide Federal Data Strategy. The Federal Data Strategy seeks to incorporate the goals and requirements of the Evidence Act and the President's Management Agenda CAP #2.²¹

Australia's experience in leveraging open data to reform its regulatory compliance regime may be instructive to the United States. A 2006 report found that, "regulatory compliance [requirements] cost Australian business tens of millions of dollars," and diverted resources from core business activities.²² In response, the Australian government established the Standard Business Reporting (SBR) system to ease regulatory compliance burdens.²³ SBR is administered on a voluntary basis and is considered by some to be the "gold standard" of regulatory modernization efforts.²⁴ Under the SBR system, multiple regulatory agencies operate under a streamlined reporting process with a similar taxonomy. To date, SBR has reduced the number of unique reporting terms across reporting forms "from almost 35,000 to less than 7,000 unique terms,"²⁵ saving regulated entities a projected \$1 billion (in Australian dollars) in compliance costs from 2016 to 2017.²⁶ 97 percent of the \$1 billion is estimated as savings to small businesses.^{27, 28}

POLICY SOLUTIONS

To streamline reporting mandates and reduce compliance costs, Congress should consider policies supporting an open data framework like the Australian Standard Business Reporting model.²⁹

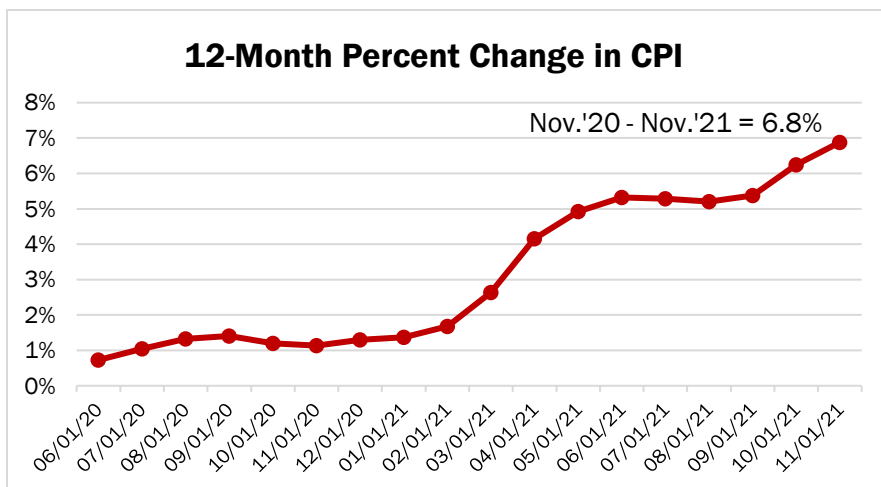
Additionally, on September 24, 2019, Congress reintroduced the Financial Transparency Act with bipartisan lead sponsors.³⁰ If passed, the bill would likely become the first domestic U.S. RegTech law.^{31,32} The Financial Transparency Act would, in part, encourage the modernization of financial regulatory filings in a similar manner to the DATA Act for federal spending data. The measure requires eight financial regulatory agencies to establish uniform data standards for regulatory reporting and to post the information online in a publicly accessible format.³³

- ¹ Clyde W. Crews, *Ten Thousand Commandments*, Competitive Enterprise Institute, May 31, 2017, <https://cei.org/sites/default/files/Ten%20Thousand%20Commandments%202017.pdf>.
- ² Bentley Coffey, Patrick A. McLaughlin, and Pietro Peretto, *The Cumulative Cost of Regulations* 8 (2016), Mercatus Center, <https://www.mercatus.org/system/files/Coffey-Cumulative-Cost-Regs-v3.pdf>.
- ³ Clyde W. Crews, *Less Than 1 Percent of Federal Regulations Get Cost-Benefit Analysis*, Competitive Enterprise Institute, Nov. 15, 2015, <https://cei.org/blog/less-1-percent-federal-regulations-get-cost-benefit-analysis>.
- ⁴ James Broughel, Richard Williams, *Government Report on Benefits and Costs of Federal Regulations Fails to Capture Full Impact of Rules* (2013), Mercatus Center, available at <https://www.mercatus.org/publication/government-report-benefits-and-costs-federal-regulations-fails-capture-full-impact-rules>.
- ⁵ Office of Information and Regulatory Affairs, Office of Management and Budget, *2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act* 8 (2017), https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf.
- ⁶ Sam Batkins, *It's Past Time to Address Regulatory Duplication*, *The Regulatory Rev.* (May 19, 2014), <https://www.theregreview.org/2014/05/19/19-batkins-regulatory-duplication/>.
- ⁷ U.S. Gov't Accountability Office, GAO-16-175, *Financial Regulation: Complex and Fragmented Structure Could Be Streamlined to Improve Effectiveness* (2016), <https://www.gao.gov/assets/680/675400.pdf>.
- ⁸ U.S. Gov't Accountability Office, *High-Risk Series: Modernizing the U.S. Financial Regulatory System* (2019), https://www.gao.gov/highrisk/modernizing_financial_system/why_did_study.
- ⁹ *Cybersecurity Regulation Harmonization Before the S. Homeland Sec. and Gov't. Aff. Comm.*, 115th Cong. (2017) (statement of Chris Feeney, President, BITS).
- ¹⁰ U.S. Dept. of the Treasury, *A Financial System That Creates Economic Opportunities Banks and Credit Unions* (June 2017).
- ¹¹ In a 2018 hearing before the House Oversight & Government Reform Subcommittee on Intergovernmental Affairs, the President of BITS (the technology policy division of the Bank Policy Institute) testified that the financial services industry is “heavily regulated,” with “nine independent Federal regulators, three self-regulatory organizations, and 50 State banking, securities, and insurance agencies.” *Regulatory Divergence: Failure of the Administrative State Before the H. Oversight and Govt. Reform Comm., Subcomm. on Intergovernmental Affairs*, 115th Cong. (2018) (statement of Chris Feeney, President, BITS).
- ¹² *Issues: Financial Transparency Act*, The Data Coalition, available at <https://www.datacoalition.org/issues/financial-transparency-act/> (last visited Aug. 2019) [hereinafter Data Coalition FTA].
- ¹³ Treasury, *supra*, note 11.
- ¹⁴ Data Foundation, *State of the Union of Open Data*, Third Edition (January 2019), <https://www.datafoundation.org/the-state-of-the-union-of-open-data-ed-3>.
- ¹⁵ *Id.*
- ¹⁶ The CIO Council, *Project Open Data—Managing Information as an Asset* (last accessed August 28, 2019), <https://project-open-data.cio.gov/>.
- ¹⁷ U.S. Office of Management and Budget, *Memorandum M-13-13*, <https://project-open-data.cio.gov/policy-memo/>.
- ¹⁸ *The President's Management Agenda*, U.S. Office of Management and Budget (Mar. 19, 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/04/ThePresidentsManagementAgenda.pdf>.
- ¹⁹ Pub. L. No. 113-101.
- ²⁰ Pub. L. No. 115-435.
- ²¹ Federal Data Strategy, *What are the Principles?* (2018), <https://strategy.data.gov/principles/>.
- ²² Taskforce on Reducing Regulatory Burdens on Business, Government of Australia, *Rethinking Regulation* (Jan. 2006), <https://www.pc.gov.au/research/supporting/regulation-taskforce/report>.
- ²³ *What is SBR?*, Standard Business Reporting: An Australian Government Initiative, <http://www.sbr.gov.au/about-sbr/what-is-sbr> (last visited Aug. 2019).
- ²⁴ Andrew Luckett, *Exploring RegTech: The Intersection of Regulation, Data, and Technology*, Apr. 5, 2019, available at <https://www.datacoalition.org/exploring-regtech-the-intersection-of-regulation-data-and-technology/>.
- ²⁵ Hudson Hollister, Joseph Kull, Michael Middleton, and Michal Piechocki, *Standard Business Reporting: Open Data to Cut Compliance Costs* (Mar. 2017), Data Foundation and PWC, <https://www.datafoundation.org/standard-business-reporting-2017>.
- ²⁶ Jessica Yabsley, *Standard Business Reporting: Congress' Answer to Reducing Regulatory Compliance*, Data Coalition, Oct. 5, 2018, <https://www.datacoalition.org/standard-business-reporting-congress-answer-to-reducing-regulatory-compliance/>.
- ²⁷ *The Benefits of a Deregulatory Agenda: Examples of Pioneering Governments Before the H. Oversight and Govt. Reform Comm., Subc. on Intergovernmental Affairs*, 115th Cong. (2018) (statement of Matt Vickers, Product Sales Manager, New Markets, Xero).
- ²⁸ Yabsley, *supra*, note 27.
- ²⁹ Hollister, *supra*, note 26.
- ³⁰ H.R. 4476 in the 116th Congress; H.R. 1530 in the 115th Congress.
- ³¹ Data Coalition FTA, *supra*, note 13.
- ³² Datatracks United States, Financial Transparency Act, <https://www.datatracks.com/us/fta/> (Accessed 2019).
- ³³ The eight federal agencies are the Securities and Exchange Commission (SEC), CFTC, the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), Federal Reserve, Federal Deposit Insurance Corporation (FDIC), Federal Housing Finance Agency, and the National Credit Union Administration.

GUIDE TO THE ISSUES

MASSIVE SPENDING BILL WILL FUEL INFLATION

As inflation continues to exceed economists' expectations month after month, Larry Summers' prediction that President Biden's stimulus could "set off inflationary pressures of a kind we have not seen in a generation" is being realized.¹ Inflation is known as "the cruelest tax," as former Chair of the Federal Reserve Paul Volcker previously noted, since it hurts those on fixed incomes, such as the poor and elderly, the hardest.² After Democrats have already approved a record amount of spending this year, the last thing Congress should be doing is spending trillions more.



Source: Bureau of Labor Statistics

- **Americans are feeling the pain of inflation across more goods and services.**
 - Despite officials attempting to assuage concerns for months, a survey conducted in October found 88% of Americans were worried about inflation.³
 - Further, another survey conducted in November had 56% of respondents saying inflation was causing them financial strain with an additional 32% saying it will become a problem if costs keep going up.⁴
 - Inflation stems from an increase in the general price level across a large basket goods and services over time, rather than a rise in prices of just a few items or a temporary change.⁵
 - While prices were rising for only a few items earlier this year, such as the price of gas and used cars, the increase in prices is now being reflected across nearly everything Americans buy, particularly as the rise in energy costs ripples through the economy.⁶
 - As inflation continued to spread across the economy in October, prices climbed higher for things such as gas, which was up a whopping 58%, and used cars, up over 31%, compared to the year before.⁷
- **As price increases persist, inflation should no longer be called "transitory."**
 - While arguments that inflation was just "transitory" may have been reasonable earlier this year when larger-than-normal price increases had only lasted a few months, that argument no longer holds weight.
 - The consumer price index (CPI) has now been rising at a rate above 2% year-over-year since March, hitting a 39-year high of 6.8% in November.⁸
 - The personal consumption expenditures price index (PCE), the Federal Reserve's preferred measure of inflation, also hit its highest level in 30 years in October at 5% year-over-year.⁹
 - After 6 months of CPI running above 5% compared to the year before, Federal Reserve Chairman Jerome Powell conceded he would retire his use of the term "transitory" in describing inflation.¹⁰

After months of climbing prices, Democrats must recognize that their reckless energy policies of shutting down the Keystone XL pipeline and stopping new oil and natural gas leases on federal lands in conjunction with

oversized federal spending bills that pay Americans to not work will only worsen inflation and supply chain woes. Americans cannot afford for Democrats to throw more fuel on the fire by exacerbating price increases with their reckless tax and spending spree and more Green New Deal policies.

Publ. December 13, 2021

¹ Lawrence Summers. Opinion: The Biden stimulus is admirably ambitious. But it brings some big risks, too. The Washington Post. February 4, 2021. <https://www.washingtonpost.com/opinions/2021/02/04/larry-summers-biden-covid-stimulus/>

² Paul Volcker Interview. PBS. <https://www.pbs.org/fmc/interviews/volcker.htm>

³ Nelseon D. Schwartz and Jeanna Smialek. Inflation Fear Lurks, Even as Officials Say Not to Worry. The New York Times. March 21, 2021. <https://www.nytimes.com/2021/03/10/business/economy/inflation-markets-federal-reserve.html> and Lorie Konish. 88% of Americans are worried about inflation. Here's where they're planning to cut back. CNBC. November 18, 2021. <https://www.cnbc.com/2021/11/18/inflation-has-88percent-of-americans-worried-heres-how-they-will-cut-back.html>

⁴ Aaron Zitner. Inflation Emerges as a Key Concern for Voters, WSJ Poll Finds. The Wall Street Journal. December 7, 2021. https://www.wsj.com/articles/wsj-poll-biden-inflation-voters-11638897374?mod=djemRTE_h

⁵ What are some of the factors that contribute to a rise in inflation? The Federal Reserve Bank of San Francisco. October 2002. <https://www.frbsf.org/education/publications/doctor-econ/2002/october/inflation-factors-rise/>

⁶ Archived Consumer Price Index Supplemental Files. News Release Table 1. Bureau of Labor Statistics. <https://www.bls.gov/cpi/tables/supplemental-files/home.htm>

⁷ *Id.*

⁸ Consumer Price Index – November 2021. Bureau of Labor Statistics. December 10, 2021. <https://www.bls.gov/news.release/pdf/cpi.pdf>

⁹ Personal Income and Outlays, October 2021. Bureau of Economic Analysis. <https://www.bea.gov/news/2021/personal-income-and-outlays-october-2021> and Jeffery Bartash.

Inflation rate hits 30-year high, PCE shows, as U.S. confronts major shortages. MarketWatch. August 27, 2021

<https://www.marketwatch.com/story/inflation-rate-hits-30-year-high-pce-shows-as-u-s-confronts-major-shortages-11630068319>

¹⁰ Nick Timiraos. High Inflation, Falling Unemployment Prompted Powell's Fed Pivot. The Wall Street Journal. December 6, 2021.

<https://www.wsj.com/articles/high-inflation-falling-unemployment-prompted-powells-fed-pivot-11638786601>



THE HIDDEN COST OF BUDGET GIMMICKS

When a politician in Washington claims something is “paid for,” it is wise to be wary. By engaging in practices that purposefully mislead the public, it is no wonder Congress’ approval rating was at 21 percent in October.¹ President Biden claims the Build Back Better plan is fully paid for and will even reduce the deficit, but in reality, it is full of budget gimmicks.² See more below on how these budget gimmicks are concealing the real cost of the Democrats’ plan.

Only Partially Funding New Programs

- Congress often doesn’t fully fund new, permanent federal programs for 10 years, although bills are scored in a 10-year window. This creates a fiscal cliff where the total cost of the programs appears smaller but pressures Congress to come back years after the program was created to shore up funding.
- The Build Back Better framework creates a new long-term federal program funding preschool for all 3- and 4-year-olds but only funds the program for six years.
- The framework also creates a new long-term federal program subsidizing childcare. This program, like the universal preschool program, only includes funding for 6 years.

Making Tax Credits Temporary

- Similarly, by making a tax credit temporary, the total cost seems smaller than extending a tax credit for 10 years. This will create pressure on Congress to extend the credit in the future when it expires.
- The Build Back Better framework expands the child tax credit without work requirements for only one year, which the Tax Foundation estimates would cost \$1.6 trillion if the expansion were extended for 10 years.³
- The framework also extends the expanded earned income tax credit for one year, while a 10-year expansion is estimated by the Joint Committee on Taxation to cost more than \$135 billion.⁴
- The Affordable Care Act premium tax credits will only be extended for four years under the framework, making the cost total over \$300 billion if extended over 10 years.

Considering the budget gimmicks employed in the Build Back Better Framework, it would be foolish to say that it would reduce the deficit. The framework only truly funds new programs for a couple years, but Congress will be expected to fund it in perpetuity, which will certainly increase the deficit. Just as budget gimmicks were used to hide the true costs and inflate the benefits of the Affordable Care Act, among numerous other pieces of legislation, Americans should heed the saying “fool me once, shame on you; fool me twice, shame on me.”⁵

POLICY SOLUTIONS

Budget gimmicks erode public trust, and rather than continuing to mislead the American people, Congress should stop the deceitful practices. Further, reforms to the Congressional Budget Office’s (CBO) scoring should be considered to allow for more transparency of a bill’s true cost. For example, CBO should treat all temporary provisions consistently, since Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985

allows new spending programs over \$50 million to be treated as permanent in the baseline, which makes an extension of the increased spending level appear costless. Other reforms, such as H.R. 638, the Cost Estimates Improvement Act, would require CBO to include the effects of servicing the debt in cost estimates, allowing for a better understanding of the true cost of a bill.

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¹ Lydia Saad. Congress Approval Rating Lowest in 2021 as Democrats Turn Negative. Gallup. October 26, 2021. <https://news.gallup.com/poll/356591/congress-approval-lowest-2021-democrats-turn-negative.aspx>

² President Biden Announces the Build Back Better Framework. The White House. October 28, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/28/president-biden-announces-the-build-back-better-framework/> and Build Back Better Framework. The White House. October 28, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/28/build-back-better-framework/> 3

Erica York and Huaqun Li. Making the Expanded Child Tax Credit Permanent Would Cost Nearly \$1.6 Trillion. Tax Foundation. March 19, 2021. <https://taxfoundation.org/expanded-child-tax-credit-permanent/>

⁴ JCX-42-21. The Joint Committee on Taxation. September 13, 2021. <https://www.jct.gov/publications/2021/jcx-42-21/>

⁵ Kathryn Nix. Obamacare and the Budget: Playing Games with Numbers. The Heritage Foundation. January 21, 2011. <https://www.heritage.org/health-care-reform/report/obamacare-and-the-budget-playing-games-numbers>



BIDEN'S SOCIALIST SPENDING SPREE

Democrats' socialist \$4.3 trillion reconciliation bill¹ will harm the economy for generations to come.

- **President Biden's budget proposal estimates U.S. GDP growth will drop to 1.8% annually by 2024² without accounting for the economy-shrinking effects of the Democrats' tax-and-spend spree.**
 - A Penn Wharton Budget Model projects the \$4.3 trillion bill will shrink GDP by 4%, while expanding the debt by 8.9%.
 - If spending continues beyond the 10-year window, the GDP will shrink by 4.8% while the debt will expand by 16.4%.³
- **Americans will pay for Democrats' plan with both higher taxes and the "hidden tax" of inflation.**
 - The Joint Committee on Taxation projects Democrats' tax hikes will hit middle-income Americans after just a few years, despite President Biden's promises.⁴
 - The Tax Foundation estimates the tax proposals alone will reduce long-run GDP by 0.98%, eliminate 303,000 jobs, and reduce the after-tax incomes of 80% of taxpayers.⁵
 - Inflation is already at 5.3% and will continue to spiral due to increased spending.⁶ It is sure to wreck havoc on elderly and low-income families with fixed incomes who will spend a larger percentage of their income or diligently saved money on costlier goods and services.
- **Democrats' so-called "environmental justice" policies – such as fining energy suppliers that do not meet certain clean electricity levels, increasing fees for drilling on public lands, and establishing a natural gas tax – will lead to higher energy costs, job losses, and continue to hit the pocketbook of American families.**
 - Punishing domestic energy suppliers compromises national security by boosting the manufacturing and energy development of foreign adversaries such as Russia.
 - Subsidizing solar panels and electric vehicles also boosts foreign adversaries like China, who supplies 80% of the world supply of critical minerals used in these products.⁷
 - Job losses are inevitable as energy sector jobs in oil, gas, and coal are eliminated in favor of green jobs. When some European Union countries attempted similar energy policies, they saw major job losses among energy sector workers who were unable to transition to new jobs. For example, Spain's wind industry subsidies eliminated 2.2 jobs for every new green energy job.⁸
 - The natural gas tax will affect thousands of everyday items.⁹ This includes up to a \$242 increase in yearly energy costs per family¹⁰ and astronomical increases to pork, beef, and dairy products.¹¹

- **The reconciliation plan will expand subsidies to the affluent.¹²**

- It provides grants of up to \$82,000 to buy new houses to individuals making over \$200,000 a year.
- It provides \$450 billion in subsidies for parents to send their children to government approved child care centers. The provision caps child care costs at 7% of a family's income and taxpayers will pay the rest. For example, based on child care costs in D.C., a family with two children and an income of \$140,000 – 1.5 times the median income – could receive \$33,000 per year in child care subsidies.¹³
- It provides paid family leave for up to 12 weeks capped at 85% of average wages for any family care. It also provides grants for private companies who already have those programs to cover the cost of paid leave.¹⁴
- Expanding child tax credits will allow a family earning \$400,000 to receive up to \$8,000 a year.
- The electric vehicle tax credit of up to \$12,500 will primarily benefit the wealthy, since nearly 80% of the tax credits were claimed by Americans making more than \$100,000.¹⁵
- The bill also awards grant funds and aid toward taxpayer-funded community college, including to illegal immigrants.¹⁶

- **Taxpayers will be forced to subsidize union membership.**

- Under this spending spree, employees who pay full union dues, including funds for political lobbying, are given a \$250 above-the-line tax deduction.
- On the other hand, employees in non-right-to-work states who are required to pay union agency fees, which do not include political lobbying, do not receive a deduction.¹⁷
- Nearly 90% of American workers are not in a union.¹⁸

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¹ Representative Yarmuth. Committee on the Budget. September 23, 2021. <https://docs.house.gov/meetings/BU/BU00/20210925/114090/BILLS-117pih-BuildBackBetterAct.pdf>

² Sarah Hanson. White House Releases Biden's \$6 Trillion Budget—Here's What's In It. Forbes. May 28, 2021. White House Releases Biden's \$6 Trillion Budget—Here's What's In It (forbes.com)

³ Jon Huntley, Maddison Erbabian, and John Ricco. The Macroeconomic Effects of the August 2021 Senate Budget Reconciliation Package. Penn Wharton University of Pennsylvania. September 9, 2021. <https://budgetmodel.wharton.upenn.edu/issues/2021/9/9/reconciliation-macro-effects>

⁴ Distributional Effects of the Estimated Budget Effects. Joint Committee on Taxation. September 14, 2021. <https://www.jct.gov/CMSPages/GetFile.aspx?guid=17444b8c-de7c-48f8-afad-c1707aa98d13>

⁵ Alex Durante, Cody Kallen, Huaqun Li, William McBride, Alex Muresianu, Erica York, and Garrett Watson. Build Back Better Act: Details & Analysis of the \$3.5 Trillion Budget Reconciliation Bill. Tax Foundation. September 16, 2021. <https://taxfoundation.org/build-back-better-plan-reconciliation-bill-tax/>

⁶ Consumer Price Index. News Release Bureau of Labor Statistics U.S. Department of Labor. August 2021. <https://www.bls.gov/news.release/pdf/cpi.pdf>

⁷ How E&C Democrats are building back China. Energy&Commerce Committee. September 14, 2021. <https://republicans-energycommerce.house.gov/news/how-ec-democrats-are-building-back-china/> and Primer: The Reconciliation Ruse to Radically Transform America. Center for Renewing America. September 24, 2021. <https://americarenewing.com/issues/primer-the-reconciliation-ruse-to-radically-transform-america/>

⁸ Kenneth P. Green. The Myth of Green Energy Jobs: The European Experience. AEI. February 15, 2011. <https://www.aei.org/research-products/report/the-myth-of-green-energy-jobs-the-european-experience/>

⁹ Products Made From Oil and Natural Gas. U.S. Department of Energy. <https://www.energy.gov/sites/prod/files/2019/11/f68/Products%20Made%20From%20Oil%20and%20Natural%20Gas%20Infographic.pdf>

¹⁰ Energy&Commerce Committee. September 13, 2021. <https://republicans-energycommerce.house.gov/wp-content/uploads/2021/09/091321-Letter-to-Congress-on-Natural-Gas-Fees.pdf>

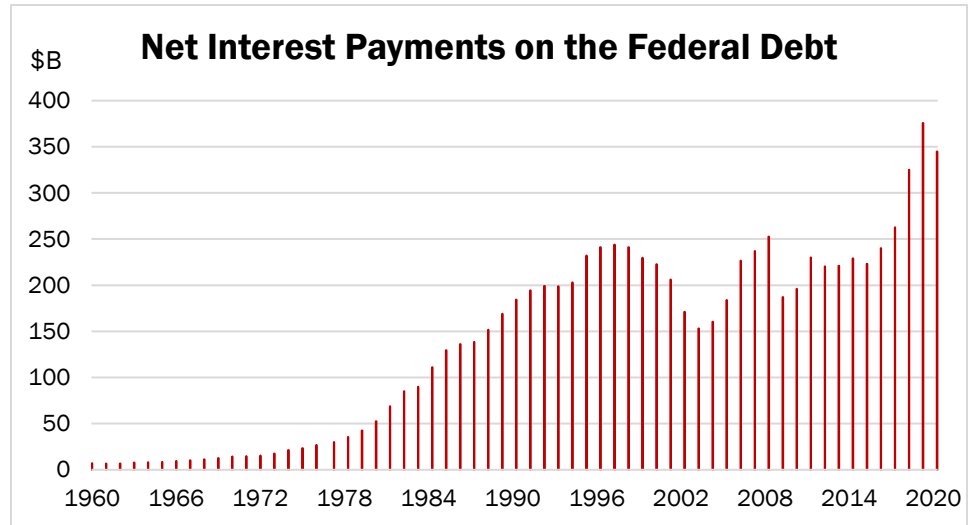
¹¹ The Natural Gas Tax is a Tax Hike on Every Part of our Lives. Energy & Commerce Committee. September 13, 2021. <https://republicans-energycommerce.house.gov/news/the-natural-gas-tax-is-a-tax-hike-on-every-part-of-our-lives/>

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- ¹² The Editorial Board. Entitlements for the Affluent. Wall Street Journal Opinion. September 27, 2021. <https://www.wsj.com/articles/entitlements-for-the-affluent-joe-biden-nancy-pelosi-bernie-sanders-democrats-spending-bill-congress-entitlements-11632780666>
- ¹³ Rachel Greszler. The Role of Childcare in an Equitable Post-Pandemic Economy. The Heritage Foundation. June 23, 2021. <https://www.banking.senate.gov/imo/media/doc/Greszler%20Testimony%206-23-21.pdf>
- ¹⁴ Rachel Greszler. 5 Things You Need to Know About the Paid Family Leave Program in Progressive’s \$3.5 Trillion Package. The Heritage Foundation. September 27, 2021. <https://www.heritage.org/budget-and-spending/commentary/5-things-you-need-know-about-the-paid-family-leave-program>
- ¹⁵ Molly F. Sherlock. The Plug-In Electric Vehicle Tax Credit. Congressional Research Service. May 14, 2019. <https://sgp.fas.org/crs/misc/IF11017.pdf>
- ¹⁶ Representative Yarmuth. Committee on the Budget. September 23, 2021. <https://docs.house.gov/meetings/BU/BU00/20210925/114090/BILLS-117pih-BuildBackBetterAct.pdf> and Houston Keene. House Dems’ \$3.5T spending bill includes free community college for illegal immigrants. Fox Business. September 27, 2021. <https://www.foxbusiness.com/politics/dems-bill-free-community-college-illegal-immigrants>
- ¹⁷ James Sherk. Report: Big Government Reconciliation Bill’s Labor Provisions Undermine Workers’ Freedom. Institute for the American Worker. September 2021. <https://i4aw.org/resources/big-government-reconciliation-labor-provisions-undermine-workers-freedom/>
- ¹⁸ Union Members. News Release Bureau of Labor Statistics U.S. Department of Labor. January 22, 2021. <https://www.bls.gov/news.release/pdf/union2.pdf>

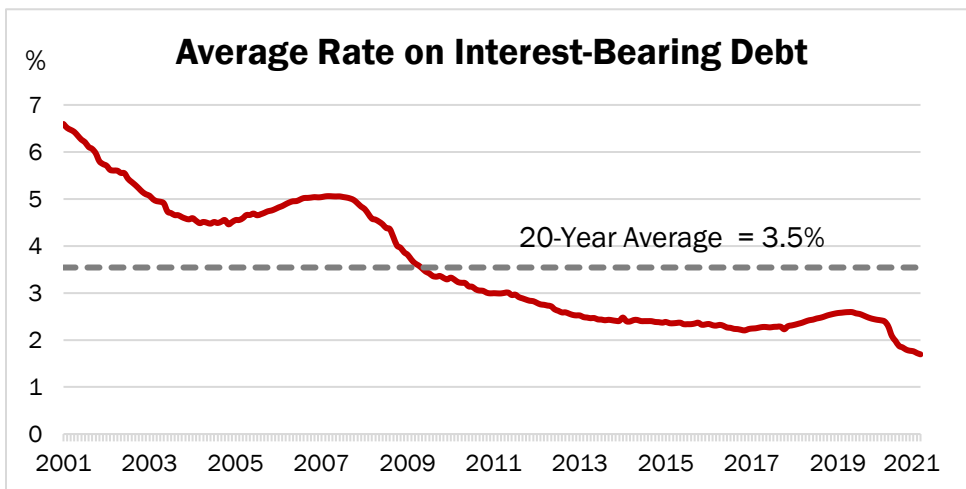


INTEREST ON THE DEBT

As of March 15, 2021, the U.S. gross national debt stood at \$28 trillion, \$4.5 trillion higher than it was the year before and the highest level in our nation's history.¹ Earlier this year, the Congressional Budget Office (CBO) projected the federal government would spend \$303 billion just servicing our debt, which we have already surpassed by adding nearly \$400 billion in 8 months as the debt continues to grow.² To put this in perspective, one day of interest payments could purchase 80 million COVID-19 vaccine doses (assuming \$20 per dose) or could cover the purchase cost of Major League Baseball's Seattle Mariners at \$1.6 billion.³ Even more troubling, if interest rates return to levels we have seen in recent history as we take on more debt, the amount of money we waste on just interest payments could approach \$1 trillion annually.



Source: U.S. Office of Management and Budget



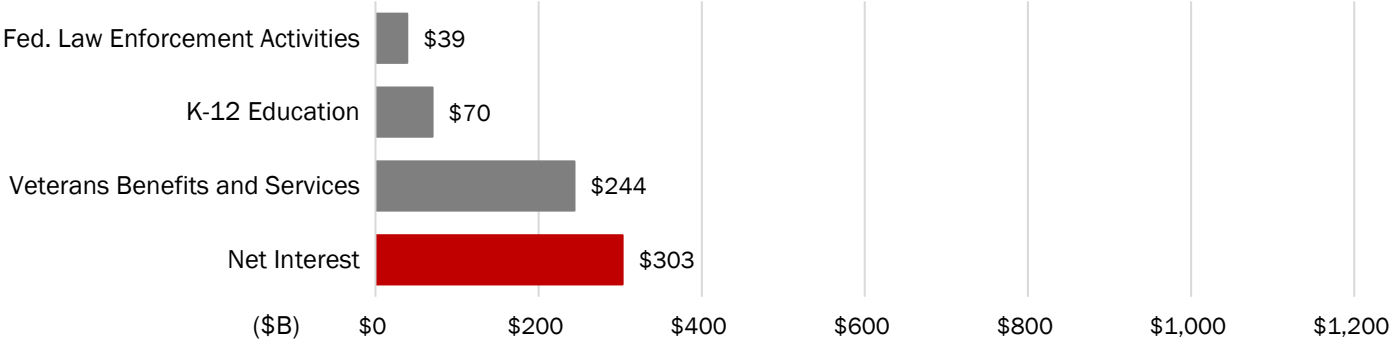
Source: U.S. Department of the Treasury

As the federal debt grows, we will be forced to spend more on interest payments than for Social Security benefit payments.⁴ While interest rates are currently low by historical standards, the sheer size of our debt has led to record interest payments.⁵ As shown below, if the Federal Reserve had to raise its interest rate target to combat rising inflation, the U.S. government could start spending more to service our debt than we do on Medicare, Medicaid, and more.

Interest Payments on the Debt at Current Rates

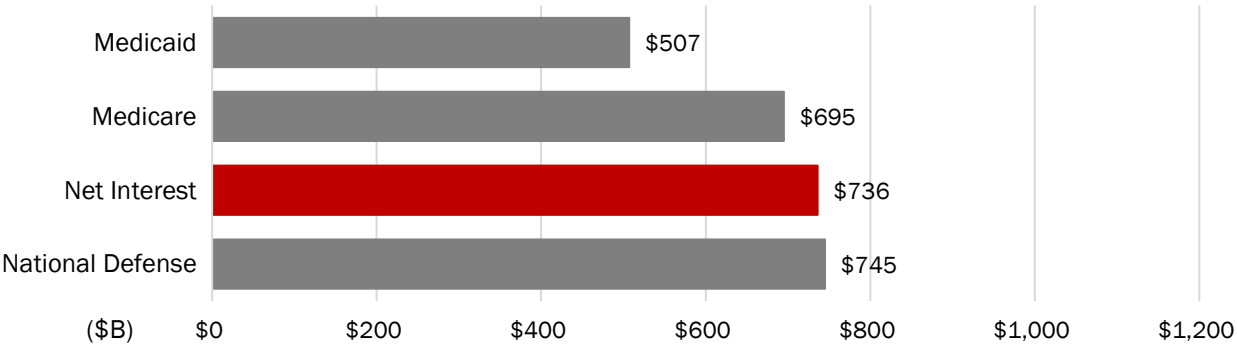
- Currently, the federal government is paying a rate of less than two percent to service the federal debt.⁶ Despite historically low rates, the federal government is projected to spend more in 2021 on net interest payments than on K-12 education, federal law enforcement activities, and veterans benefits and services, just to name a few.⁷

This interest amount is excluding the deficit impact from the \$1.9 trillion American Rescue Plan Act or any other major supplemental spending packages that Democrats may pass in 2021.



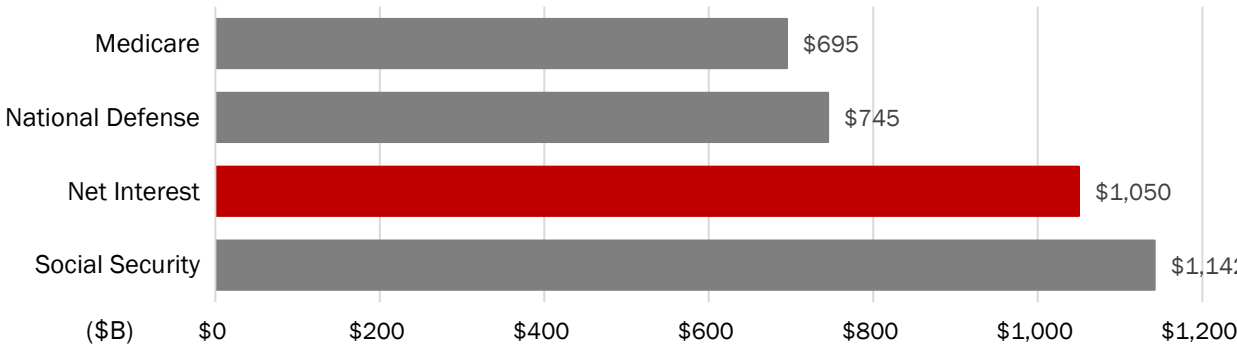
Interest Payments on the Debt at 3.5% Rate

- If interest rates rose to 3.5 percent, which is the 20-year average, the federal government would spend over \$700 billion servicing the debt, more than we are expected to spend on Medicaid or Medicare in 2021.⁸



Interest Payments on the Debt at 5% Rate

- While interest rates have been low by historical standards, if interest rates rose to 5 percent, where they were as recently as 2007, net interest payments on the debt level held by the public at the end of 2020 would be over \$1 trillion, more than the federal government spends annually on everything but Social Security.⁹



Clearly, a small increase in interest rates could quickly lead to debt service crowding out other important national priorities. Congress must take immediate action to address the federal debt as the COVID-19 crisis subsides, rather than continuing to increase the deficit to spend on unrelated political priorities. (See also the RPC guide titled “Confront the Federal Debt.”¹⁰).

¹ The Debt to the Penny and Who Holds It. TreasuryDirect. March 15, 2021.

https://www.treasurydirect.gov/govt/reports/pd/pd_debttothepenny.htm

² Additional Information About the Budget Outlook: 2021 to 2031. Congressional Budget Office. March 5, 2021.

<https://www.cbo.gov/system/files/2021-03/56996-budget-outlook.pdf> and The Fiscal & Economic Impact of the National Debt. Peter G. Peterson Foundation. March 23, 2021. <https://www.pgpf.org/the-fiscal-and-economic-challenge/fiscal-and-economic-impact> and https://www.treasurydirect.gov/govt/reports/ir/ir_expense.htm

³ MLB Team Evaluations. Forbes. March 2021. <https://www.forbes.com/teams/seattle-mariners/?sh=711577127715> and Fortune 500: The Top 10. Fortune. 2021. <https://fortune.com/fortune500/>

⁴ The Fiscal & Economic Impact of the National Debt. Peter G. Peterson Foundation. March 23, 2021. <https://www.pgpf.org/the-fiscal-and-economic-challenge/fiscal-and-economic-impact>

⁵ U.S. Office of Management and Budget, Federal Outlays: Interest [FYOINT]. Retrieved from FRED, Federal Reserve Bank of St. Louis. March 25, 2021. <https://fred.stlouisfed.org/series/FYOINT>

⁶ U.S. Department of the Treasury. Average Interest Rates on U.S. Treasury Securities. March 25, 2021.

<https://fiscaldata.treasury.gov/datasets/average-interest-rates-treasury-securities/average-interest-rates-on-u-s-treasury-securities>

⁷ The Budget and Economic Outlook: 2021 to 2031. Congressional Budget Office. February 11, 2021.

<https://www.cbo.gov/system/files/2021-02/56970-Outlook.pdf> and Spending Projections, By Budget Account. Congressional Budget Office. February 2021. <https://www.cbo.gov/data/budget-economic-data#3>

⁸ Spending Projections, By Budget Account. Congressional Budget Office. February 2021. <https://www.cbo.gov/data/budget-economic-data#3>

⁹ Spending Projections, By Budget Account. Congressional Budget Office. February 2021. <https://www.cbo.gov/data/budget-economic-data#3>

¹⁰ <https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/39%20-%20Confront%20the%20Federal%20Debt.pdf>



DEMOCRATS' POWER GRAB PLAYBOOK

Democrats are leveraging their slim congressional majority and White House control to secure permanent political power. Under the guise of “democracy reform,”¹ Democrats’ “legislative” priorities would restructure Congress to suppress party opposition and destroy American democracy as we know it.

Restructuring Congress – the First Step to Single-Party Rule²

- Rescinding Minority Procedural Rights – According to Leader Kevin McCarthy (R-CA), the Democrats’ 117th Congress rule changes³ “enable[es] the most significant power grab in the history of Congress, leaving our constituents’ voices shut out of the real lawmaking progress” and “disregards rights of the minority at all levels...that will have lasting consequences for our institution.”⁴
 - Limiting the Motion to Recommit (MTR) – Democrats gutted a centuries-old tool dating back from the first Congress to prevent bills from being amended on the floor in a bipartisan manner. This change comes in response to Republicans successfully using the MTR eight times in the last Congress.
 - Voting by Proxy – Despite every Democrat voting in person for Speaker Pelosi, including one with COVID, the rules permit Members to stay home, cast votes on ten other Members’ behalf, and extends remote Committee proceedings. This consolidates Democrat leadership influence by sidelining rank-and-file and minority Members from participating in negotiations.⁵
 - Creating New PAYGO Exemptions – Allows the Chair of the Budget Committee to waive rules requiring bills to pay for themselves if the Chair decides the bill is pandemic-related or designed to combat climate change. This subjective power makes it easier to pass deficit-busting partisan priorities.⁶
- Blocking Reading of Bills – Democrats are denying Americans the opportunity to hear what is in their partisan proposals⁷ by declaring bills “considered read.” This is meant to keep citizens in the dark by preventing the clerk from being able to read the bill aloud on the House floor.
- Eliminating the Filibuster – Removes the Senate 60-vote threshold for passing legislation that is being filibustered, eroding the Senate’s role as a deliberative body. In 2020, the Senate Democrat minority used the filibuster 327 times to block legislation.⁸ By eliminating this rule, Democrats could ram through a partisan progressive agenda and squash the voice of the minority. *Politico* reports Democrat leadership has considered a filibuster “carve out” plan to ram through portions of H.R. 1 and other voting reform legislation, for example.⁹
- Reinstating Earmarks – Incentivizes Democrat leadership to buy off support for their partisan agenda across their slim majority, further consolidating their power.

Restructuring the Country – Cementing Democrats’ Absolute Power¹⁰

- H.R. 1 – This progressive priority wish list represents a Democrat power seizure by nationalizing elections and imposing institutional advantages for Democrat campaigns. As Sen. Cruz (R-TX) stated, H.R. 1 would “[change] elections forever so Democrats never lose.”

- Ranking Member Rodney Davis (R-IL) released a list of the “Top Ten Most Egregious Provisions of H.R. 1” that prioritized the interest of politicians over the people in February 2021.¹¹
- Establishing D.C. and Puerto Rico Statehood – Frustrated by the equal representation of rural and smaller states, H.R. 51, the Washington D.C. Admission Act, would secure two Senate seats and a seat in the House of Representatives for Democrats. Democrats may similarly consider statehood for Puerto Rico to ensure permanent Democratic rule. The leftist group Indivisible describes this strategy as a top priority to “Fix the Senate” and “Save Our Democracy.”¹² (*RPC has released a D.C. statehood policy brief, entitled “D.C. Statehood for Democrat Rule.”*¹³).
 - Ranking Member James Comer (R-KY) states, “D.C. statehood is all about Speaker Pelosi and liberal democrats consolidating their power to enact radical policies nationwide like the Green New Deal, packing the Supreme Court, and eliminating the filibuster.”¹⁴
- Executive Order Overreach – With the stroke of a pen, President Biden expanded administrative state power to an historic level, by signing more Executive Orders (EO) in his first two weeks of office than President Franklin D. Roosevelt in his first month.¹⁵ These EO’s carry the force of law over matters of climate change, immigration, education, and energy, with no congressional input. These EO’s have already cost thousands of U.S. jobs. (*RPC has released two new policy briefs on regulatory overreach, entitled “Biden’s Return to Hyper-Regulation,” and the “Congressional Review Act”*).¹⁶
- Court Packing – Democrats are considering a radical restructuring of the Supreme Court following the successful confirmation of Justice Barrett. In 2020, Democrats incorporated “structural court reforms” in their party platform.¹⁷ The Biden Administration’s proposed Judicial Review Commission represents a blatant political power grab to influence Court rulings and destroy our system of checks and balances.

As Thomas Jefferson stated in his First Inaugural Address in 1801, “bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect and to violate would be oppression.”¹⁸ If successful, Democrats’ institutional reforms will entrench their permanent single-party rule and impose the permanent oppression of those who disagree.

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¹ Democrats believe they cannot win unless they achieve structural reform to impose institutional advantages. <https://indivisible.org/democracy-guide> and <https://crooked.com/articles/democracy-reform-trumpism/>

² <https://apnews.com/article/legislation-coronavirus-pandemic-nancy-pelosi-fce0c1079db207aaa15d146e19ab4f2d> and <https://www.heritage.org/political-process/commentary/new-radical-rules-new-radical-congress>

³ H.Res. 8 <https://www.congress.gov/bills/117/congress/house-resolution/8>

⁴ <https://www.republicanleader.gov/biggest-power-grab-in-the-history-of-congress/>

⁵ https://rules.house.gov/sites/democrats.rules.house.gov/files/Step-by-Step_Remote_Floor_Voting.pdf and <https://thehill.com/homenews/house/542862-house-democrats-open-to-making-proxy-voting-the-new-normal>

⁶ <https://www.foxnews.com/politics/house-rules-paygo-green-new-deal>

⁷ For example https://rules.house.gov/sites/democrats.rules.house.gov/files/Rule_SAH1319.pdf and https://rules.house.gov/sites/democrats.rules.house.gov/files/Rule_HR1620HR6HR1603HR1868HJRes17.pdf

⁸ <https://twitter.com/johnrobertsFox/status/1375471429660127236> and <https://gop.com/the-democrats-filibuster-hypocrisy/>

⁹ Sen. Manchin (D-WV) has stated that he opposes the proposal for filibuster “carve outs” for specific legislation, at the time of this brief. <https://www.politico.com/news/2021/03/17/biden-filibuster-fight-476684>; <https://twitter.com/sarahnferris/status/1372218278186205188>; <https://twitter.com/burgesssev/status/1372218039047966725>; <https://www.politico.com/newsletters/playbook/2021/03/16/progressives-dems->

must-choose-between-black-voters-and-the-filibuster-492121 <https://www.politico.com/news/2021/03/25/voting-rights-filibuster-477905>;
and <https://www.politico.com/news/2021/03/17/white-house-filibuster-reform-476900>

¹⁰ https://www.wsj.com/articles/pelosis-top-priority-consolidating-power-11610667245?mod=searchresults_pos14&page=1&utm_source=2019+House+GOP+Staff+List&utm_campaign=894605381f-EMAIL_CAMPAIGN_2019_01_29_06_11_COPY_01&utm_medium=email&utm_term=0_a8407dc016-894605381f-147384861 and <https://www.nytimes.com/2020/09/28/us/politics/democrats-filibuster-supreme-court-biden.html>

¹¹ https://mcusercontent.com/67fba463240fdd948eb636b35/files/922cd618-969a-4bbd-a8f9-a41d3bd50f28/HR_1_Top_Ten_Problems.02.pdf

¹² <https://indivisible.org/democracy-guide>

¹³ <https://republicanpolicy.house.gov/policy-guides/policy-briefs>

¹⁴ <https://republicans-oversight.house.gov/release/comer-democrats-dc-statehood-bill-is-an-unconstitutional-political-power-grab/>

¹⁵ FDR held the previous record for Executive Orders. <https://www.npr.org/2021/02/03/963380189/with-28-executive-orders-signed-president-biden-is-off-to-a-record-start>

¹⁶ <https://republicanpolicy.house.gov/policy-guides/policy-briefs>

¹⁷ <https://www.demconvention.com/wp-content/uploads/2020/08/2020-07-31-Democratic-Party-Platform-For-Distribution.pdf> and <https://www.politico.com/news/2021/01/27/biden-supreme-court-reform-463126>

¹⁸ The Papers of Thomas Jefferson, Volume 33: 17 February to 30 April 1801. (Princeton University Press, 2006), 148-52. <https://jeffersonpapers.princeton.edu/selected-documents/first-inaugural-address-0>



TACKLE FEDERAL IMPROPER PAYMENTS

“We all make mistakes, but most of us don’t make mistakes with billions of dollars of other people’s money.”¹ As federal spending and the national debt continue to rise, the amount of federal improper payments grows with it. These payments represent systemic government waste and mismanagement of taxpayer resources.

BACKGROUND

Improper payments are defined as “any payment that should not have been made or that was made in an incorrect amount, including an overpayment or underpayment, under a statutory, contractual, administrative, or other legally applicable requirement.”² According to the Government Accountability Office (GAO), “the federal government is unable to determine the full extent to which improper payments occur and reasonably ensure that actions are taken to reduce them.”³ Since 2002, a series of laws have established and expanded requirements for agencies to identify, measure, prevent, and report improper payments within their programs. Despite these requirements, GAO estimates that government-wide improper payments have totaled over \$1.5 trillion since 2003.⁴

Due in part to historic spending during the COVID-19 pandemic, federal improper payments rose to a conservatively reported \$206 billion in FY2020.⁵ This represents an increase of about \$31 billion from a total \$175 billion in FY2019, according to figures released by the Office of Management and Budget (OMB).⁶

The five highest reported root causes for improper payments in FY2020 include: insufficient documentation (over \$105 billion, an increase of more than \$31 billion from FY2019); inability to verify eligibility (about \$32.5 billion); administrative or process errors made by other parties (about \$22 billion);⁷ administrative or process errors made by state or local agencies (about \$13 billion); and program design or structural issues (about \$14 billion).⁸

Select Transparency and Accountability Concerns:

- GAO has been unable to render an opinion on the Federal Government's consolidated financial statement since 1997, due in part to the government's inability to adequately account for and reconcile its financial activities.⁹
- OMB ceased publishing the total amount of federal improper payments on its website in 2017, focusing only on program-by-program amounts at individual agencies.¹⁰
- According to GAO, “OMB's new guidance [on improper payments to federal agencies] does not specifically direct agencies to include COVID-19 relief funding with associated key risks as part of their improper payment estimate methodologies.”¹¹
- Although the federal government reported \$206 billion in improper payments in FY2020, this estimate generally does “not include estimates related to the reported \$1.6 trillion in fiscal year 2020 budget

expenditures to fund response and recovery efforts for the COVID-19 pandemic.”¹²

- Nearly 38%, or nine of 24 Chief Financial Officer Act agencies, were noncompliant with the six improper payment criteria¹³ required under federal law – with the six criteria requirements shown in the table below – in FY2019.¹⁴ This was an improvement from FY2018, where half of such agencies reported as noncompliant. However, compliance does not necessarily imply accurate reporting.¹⁵
- A lack of sufficient reporting prevents a full account of government-wide improper payments.¹⁶ Since 2010, agencies with any program reported as noncompliant with any of the six required criteria must submit a plan to Congress to resolve its noncompliance. Agencies who are noncompliant for three or more consecutive years are required to notify Congress and submit a proposal for reauthorization or statutory change to bring that program into compliance.¹⁷

Big Errors Across Big Government

Of the conservatively reported government-wide total of \$206 billion in improper payments in FY2020, the Department of Health and Human Services (HHS) alone reported over \$134 billion, or about two-thirds (65%), of that reported total.¹⁸ HHS recently released FY2021 figures at the time of this guide, with a reported \$153.86 billion in improper payments.¹⁹ HHS’s noncompliance with the six improper payment criteria required under federal law for FY2020 is shown below.

HHS’s Noncompliance Reporting Table [with the Six Required Criteria] for Programs That Are Susceptible to Significant Improper Payments, FY2020²²

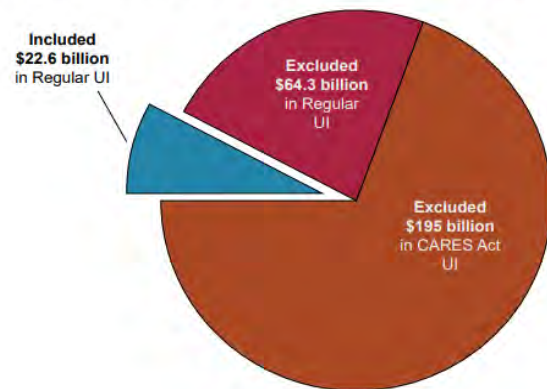
Program Name	Published an Agency Financial Report (AFR) or Performance Accountability Report (PAR)	Conducted a Risk Assessment	Published an Improper Payment Estimate for CY	Published a Corrective Action Plan	Published Reduction Targets in CY AFR and Met Reduction Targets set in PY AFR	Reported an Improper Payment Rate of < 10%
Medicare Advantage (Part C) (a)	Compliant	N/A	Compliant	Compliant	Partially Compliant	Compliant
Medicaid	Compliant	N/A	Compliant	Compliant	Partially Compliant ²⁰	Noncompliant
CHIP	Compliant	N/A	Compliant	Compliant	Partially Compliant ²¹	Noncompliant
Advance Premium Tax Credit (APTC)	Compliant	N/A	Noncompliant	Noncompliant	Noncompliant	Noncompliant
Foster Care	Compliant	N/A	Compliant	Compliant	Partially Compliant	Compliant
Temporary Assistance for Needy Families (TANF)	Compliant	N/A	Noncompliant	Noncompliant	Noncompliant	Noncompliant
CDC Disaster Relief	Compliant	N/A	Noncompliant	Noncompliant	Noncompliant	Noncompliant
Office of Head Start (OHS) Disaster Relief	Compliant	N/A	Noncompliant	Noncompliant	Noncompliant	Noncompliant

Source: HHS Inspector General. In FY2021, HHS did not report improper payment rates for two high-risk programs, TANF and Foster Care. HHS “believes it does not have the authority under the Social Security Act to compel states to report [TANF] error rates,” and did not report Foster Care after pausing on-site eligibility reviews due to COVID-19.²³

Select federal programs reporting high improper payment rates include:

- Medicare.** Medicare (Fee-for-Service, Part C, and Part D) reported an estimated \$43 billion in improper payments in FY2020.²⁴ Although this represented a slight decline from \$46 billion in FY2019,²⁵ **HHS recently reported a substantial FY2021 increase to about \$50 billion in improper payments.**²⁶ Moreover, GAO reports “improper payment rates do not yet take into account the potential for improper payments that may result from inappropriate use of flexibilities given to providers and patients during the COVID-19 public health emergency. These flexibilities included...the use of program waivers for telehealth services and waivers of a number of provider enrollment requirements, such as certain background checks.”²⁷
- Medicaid.** Although some federal programs reduced their improper payment rates in FY2020, other programs – such as Medicaid, which covers an estimated 77 million low-income Americans – rose, driving the higher rate of the federal government’s total erroneous payments. Medicaid improper payments rose from \$57 billion to \$86.49 billion in FY2020, an increase of nearly \$30 billion from FY2019.²⁸ This stark increase accounts for 21%, or one out of every five Medicaid payments.²⁹ Recently, the Centers for Medicare & Medicaid Service (CMS) reported a staggering **\$98.72 billion in Medicaid improper payments in FY2021, again representing 21.69%, or one of five Medicaid expenditures.**³⁰
 - Medicaid’s significant increase can be largely attributed to the CMS reintegrating its Payment Error Rate Management (PERM) rotational eligibility reviews on states, which it had ceased to perform following rule changes from the Affordable Care Act’s Medicaid expansion, and therefore did not report improper payment rates. ³¹ According to CMS, the primary root causes of Medicaid’s improper payments are insufficient documentation and eligibility errors.
- Unemployment Insurance (UI):** In 2021, the Department of Labor (DOL) Inspector General (OIG) reported to Congress an estimated \$87 billion in improper payments, representing 10% or more of UI expenses, with a “significant portion attributable to fraud.”³² Further, DOL “permitted state workforce agencies to suspend their improper payment sampling efforts for the final quarter of the [UI] program year to reduce the burden on program resources responsible for processing” benefit claims and implementing new COVID-19 related programs.
 - Three new CARES Act programs that provided federally funded unemployment benefits – the Pandemic Unemployment Assistance, the Pandemic Emergency Unemployment Compensation, and the Federal Pandemic Unemployment Compensation programs – were “excluded from the UI program improper payment information as they were not in existence for more than 12 months as of the reporting period. These three programs comprised approximately \$195 billion, or 69 percent of the total \$281.8 billion unemployment expenses” for 2020, as the chart demonstrates.
 - “As such, DOL’s improper payment information is reflective of only \$22.6 billion, or 8 percent, of total unemployment expenses reported by DOL.” Therefore, although “DOL’s [total] reported UI improper payment rate of 9.17 percent is compliant with” federal law, it is likely actually “higher than 10 percent,”³³ which would be noncompliant.
- Earned Income Tax Credit (EITC).** The EITC, which regularly reports one of the highest rates of improper payments every year, reported \$16 billion in improper payments in FY2020. This accounts for 23.5%, or nearly one-quarter, of every EITC payment.³⁴ Inability to verify eligibility was the leading root cause, accounting for 94% of EITC improper payments. The Treasury Inspector General for Tax Administration’s (TIGTA) audit also reports that the Internal Revenue Service (IRS) does not verify “the majority of EITC claims by taxpayers whose previous EITC was denied.” Furthermore, the IRS has requested relief from

Figure 6. UI Benefits Included and Excluded from FY 2020 IP Rate



mandated reporting of erroneous refundable tax credits on the basis that they should not be considered “payments.”³⁵

IRS Noncompliance with IP Reporting Requirements for the EITC, ACTC, and AOTC Programs for FY 2020

Improper Payment Requirement	Source of Requirement	Provided by the IRS
Report an improper payment rate of less than 10 percent.	PIIA	⊗

Source: TIGTA review³⁶

- **Small Business Administration (SBA) COVID-19 Relief Funds (CRF).** On November 31, 2021, the SBA OIG reported “serious concerns” over \$3.7 billion in improper payments through the COVID-19 Economic Injury Disaster Loan (EIDL) program.³⁷ The OIG largely attributed the errors to SBA’s failure to conduct pre-award recipient eligibility through the Do Not Pay System, as required by federal law. The Do Not Pay System is the federal government’s centralized source to assist agencies with pre-and post-award eligibility by pulling certain records from various federal databases.
 - According to GAO, SBA has impeded efforts to evaluate the EIDL and the Paycheck Protection Program (PPP) by failing to provide timely data and documentation “of its plans for testing, including estimates of improper payments and error rates” since June 2020, despite telling GAO such testing was planned. The Consolidated Appropriations Act of 2021 “requires SBA to respond” to GAO requests “within 15 days (or such later date as the Comptroller General may provide) or report to Congress on the reasons for the delay.”³⁸

POLICY SOLUTIONS

Congress must utilize its legislative and oversight authorities to safeguard the integrity of taxpayer resources. At a minimum, Congress must review root causes to determine appropriate actions to reduce improper payments. Actions Congress may consider include, but are not limited to:

- Reduce payments to ineligible deceased recipients. Amending the Social Security Act would enable the Social Security Administration to share relevant death data to appropriate federal agencies and other administering entities;
- Facilitate government-wide data standardization by establishing a common taxonomy and information sharing by reforming the Computer Matching Act, the Do Not Pay System, and the National Directory of New Hires;
- Review statutory limitations to data sharing between federal, state, and local agencies; and
- Explore enforcement mechanism options to compel agency compliance with improper payment requirements under federal law.

In March 2020, President Trump signed the Payment Integrity Information Act into law. The law consolidated the various existing improper payment laws within the U.S. Code. It also created a working group consisting of federal agencies and non-federal partners, such as state governments, to develop strategies to address root causes of improper payments.

Promoting accountability and program integrity requires transparency across the Federal Government.³⁹ The GPRA Modernization Act of 2010 required the development of a federal program inventory and quarterly reporting on performance management.⁴⁰ According to GAO, such an inventory list would help agencies identify significant savings,⁴¹ but to date no such inventory exists. In January 2021, Congress passed the Taxpayers Right-to-Know Act into law, which builds on efforts to promote transparent accounting of programs by requiring public agency disclosure of performance metrics and financial data across certain federal programs.⁴² It also requires the disclosure of essential budgetary information and links to relevant GAO and Inspectors General reviews.

¹ Justin Bogie, The Heritage Foundation, *Improper Payments are Costing Taxpayers a Fortune* (2019) at <https://www.heritage.org/budget-and-spending/commentary/improper-payments-are-costing-taxpayers-fortune>.

² The Payment Integrity Information Act, Pub. L. No. 116-117.

³ U.S. Gov't Accountability Office [hereinafter GAO], *GAO-21-340R, Financial Audit: FY 2020 and FY 2019 Consolidated Financial Statements of the U.S. Government* (Mar 2021), <https://www.gao.gov/assets/gao-21-340r.pdf>.

⁴ GAO-16-554, *Improper Payments: CFO Act Agencies Need to Improve Efforts to Address Compliance Issues* (2016), <https://www.gao.gov/assets/680/678154.pdf>. While federal data on improper payments is generally unreliable, not all improper payments represent a loss to the government: Roughly 10% of improper payments are considered underpayments, while about 90% of improper payments are overpayments. These figures are based off of FY2015 data from OMB's website, which is no longer available.

⁵ U.S. Off. of Mgm't and Budget [hereinafter OMB], Payment Accuracy, *Payment Accuracy 2020 Data Set*, <https://paymentaccuracy.gov/the-numbers/>. In FY2018, the Federal Government reportedly sent out \$151 billion in improper payments, an increase of about \$10 billion from FY2017. Nearly all of the increase was attributed to the USDA Supplemental Nutrition Assistance Program, which began reporting its improper payments for the first time in about four years. GAO-19-314, *The Nation's Fiscal Health Action Is Needed to Address the Federal Government's Fiscal Future* (2019), <https://www.gao.gov/assets/700/698368.pdf> and Briefing by the GAO to Republican Policy Committee staff, Feb. 27, 2019.

⁶ *Id.* In FY2019, GAO found that about \$74.6 billion, or 42.7 percent, of the government-wide improper payments estimate was reported as a monetary loss. According to OMB Circular No. A-136, "monetary loss" represents an amount that should not have been paid and in theory should or could be recovered. OMB acknowledges on its website that "the American citizens deserve to know that their hard-earned tax dollars are being spent as efficiently and effectively as possible by the Federal government. Although not all improper payments are fraud, and not all improper payments represent a loss to the government, all improper payments degrade the integrity of government programs and compromise citizens' trust in government." GAO-20-344, *Payment Integrity: Federal Agencies' Estimates of FY 2019 Improper Payments* (March 2020), <https://www.gao.gov/assets/710/705016.pdf> and OMB, Payment Accuracy, *FAQ: What is an Improper Payment?* (2020) <https://paymentaccuracy.gov/faq/>

⁷ For example, health care provider, lender, or any organization administering federal dollars.

⁸ OMB, *Supra*, at 5. Note: data may be incomplete due to failure to report. For comparison, FY2018 root causes were reported thusly: The five highest reported root causes for improper payments in FY18 include (note: data may be incomplete due to failure to report): Inability to verify eligibility (about \$40.8 billion); insufficient documentation (\$40 billion); administrative or process errors made by state or local agencies (\$21.5 billion); administrative or process errors made by other parties (\$19 billion); and administrative or process errors made by federal programs (over \$12.77 billion). OMB, Payment Accuracy, *Payment Accuracy 2018 Data Set*, <http://paymentaccuracy.gov/wp-content/uploads/2019/07/2018-Dataset-7-18-2019.xlsx>.

⁹ Press Release, GAO, *U.S. Government's Annual Financial Report Unable to Pass GAO Audit* (Feb. 25, 2016), https://www.gao.gov/about/press-center/press-releases/read/usgov_financial_report_unable_pass_gao_audit.htm.

¹⁰ GAO, *Financial Audit: Fiscal Years 2017 and 2016 Consolidated Financial Statements of the U.S. Government* (Feb. 15, 2018), <https://www.gao.gov/assets/700/690123.pdf>.

¹¹ GAO-21-567PR, *Priority Open Recommendations: Office of Management and Budget* (Jun. 24, 2021), available at <https://www.gao.gov/assets/720/715666.pdf>.

¹² Secretary Janet Yellen, Department of the Treasury, *Financial Report of the United States Government, FY2020* (Mar. 25, 2021), available at [https://fiscal.treasury.gov/files/reports-statements/financial-report/2020/fr-03-25-2021-\(final\).pdf](https://fiscal.treasury.gov/files/reports-statements/financial-report/2020/fr-03-25-2021-(final).pdf).

¹³ The Payment Integrity Information Act consolidated all federal improper payment laws. The six requirements agencies must follow to be compliant with PIIA are: 1) published an Agency Financial Report (AFR) for the most recent fiscal year and post the AFR and accompanying materials on the agency website; 2) Conduct a program-specific risk assessment (if applicable) for each program or activity susceptible to significant improper payments; 3) Publish improper payment estimates for all such programs and activities; 4) Publish programmatic corrective action plans in the AFR; 5) Publish and meet reduction targets for each program susceptible to significant improper payments; and 6) Report an improper payment rate of less than 10% for each program and activity for which an estimate was published.

¹⁴ The nine noncompliant agencies in FY2019 were the Departments of Defense, Labor, Health and Human Services, Housing and Urban Development, NASA, Social Security Administration, Treasury, Agriculture, and the Veterans' Administration. Eight of the nine agencies have been noncompliant with improper payment reporting requirements since 2010. NASA was compliant with improper payment reporting requirements every year except for FYs2011 and 2019. OMB, Payment Accuracy, *Payment Accuracy 2020 Data Set*, <https://paymentaccuracy.gov/the-numbers/>. See also GAO-19-14, *Improper Payments: Additional Guidance Needed to Improve Oversight of Agencies with Noncompliant Programs* (Dec. 2018), <https://www.gao.gov/products/GAO-19-14> and Chief Financial Officers Act of 1990, H.R. 5687, 101st Cong. (1990).

¹⁵ For example, at least one agency Inspector General "reported inaccurate amounts for identified and recaptured improper payments in its" annual financial report (AFR) in FY2019. However, "the IG reported that the agency was compliant with the IPERA criterion for publishing financial information in a [performance and accountability report (PAR)] or AFR." GAO, *supra* at 6.

¹⁶ GAO notes that "the federal government's ability to understand the full scope of its improper payments is hindered by incomplete, unreliable, or understated agency estimates; risk assessments that may not accurately assess the risk of improper payment; and agencies not complying with reporting and other requirements" of federal law. Other concerns include, but are not limited to, unreliable or underreported estimates, inaccurate risk assessments, thresholds for improper payments in high-priority programs, noncompliance with federal law, and other considerations. GAO, *supra* at 6.

¹⁷ *Supra*, at 2.

¹⁸ *Supra*, at 5.

¹⁹ Dep't of Health and Human Services, Agency Financial Report, Fiscal Year 2021, available at <https://www.hhs.gov/sites/default/files/fy-2021-hhs-agency-financial-report.pdf>.

²⁰ *Id.* HHS OIG did not qualify Medicaid or CHIP as either partially compliant or noncompliant with this criterion in its report, stating, "As permitted by OMB Circular A-123, Appendix C...HHS did not report improper payment target rates for Medicaid and CHIP in FY 2020. HHS resumed the Medicaid and CHIP eligibility component measurements in 2019 and reported the second updated national eligibility improper payment

estimates in FY 2020. Since HHS uses a 17-state, 3-year rotation for measuring Medicaid and CHIP improper payments, the publication of reduction targets will occur in FY 2021 once HHS establishes and reports a full baseline, including eligibility.”

²¹ *Id.*

²² Ernst & Young, Independent performance audit to the Secretary and the Inspector General of the U.S. Dep’t of Health and Human Services, *Report of Independent Auditors on HHS’ Compliance with the Payment Integrity Information Act of 2019* (May 10, 2021), <https://oig.hhs.gov/oas/reports/region17/172152000.pdf>.

²³ *Supra*, at 24.

²⁴ *Supra*, at 5.

²⁵ *Id.* See also GAO-21-119SP, *High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas* (Mar. 2, 2021), <https://www.gao.gov/assets/720/712657.pdf>.

²⁶ *Supra*, at 24

²⁷ *Id.*

²⁸ *Id.*

²⁹ Centers for Medicare and Medicaid Service Programs, “Fact Sheet: 2020 Estimated Improper Payment Rates for Centers for Medicare & Medicaid Services (CMS) Programs,” publ. Nov. 16, 2020, available online at https://www.cms.gov/newsroom/fact-sheets/2020-estimated-improper-payment-rates-centers-medicare-medicicaid-services-cms-programs#_ftn1. When Medicaid’s improper payments reached \$57 billion in FY19, it represented about one-third of all government-wide improper payments. Up to FY19, Medicaid’s improper payment rise could primarily be attributed to CMS conducting PERM eligibility reviews on states for the first time since FY2015. CMS, Off. of Financial Mgm’t, The PERM Eligibility Team, *The New PERM Eligibility Review and Other Final PERM & MEQC Changes*, July 6, 2017, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-and-Medicaid-Compliance/PERM/Downloads/TheNewPERMEligibilityReviewandOtherFinalPERMandMEQCChanges.pdf> and GAO, *supra* at 7.

³⁰ According to CMS’s FY2021 report, “The improper payment estimate due to lacking or insufficient documentation is 19.13 percent or \$87.08 billion, representing 88.21 percent of total improper payments.” Medicaid’s improper payments can be broken down thusly: Fee-for-Service (FFS): 13.9%; managed care: 0.04%; and eligibility: 16.62%. *Supra*, at 24. See also CMS, Improper Payment Measurement Programs, PERM Error Rate Findings and Reports, “Rolling National Medicaid Improper Payment Rates” and supplemental datasets, last accessed Dec 2021, at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-and-Medicaid-Compliance/PERM/PERMErrorRateFindingsandReport>.

³¹ *Supra* at 24 and 29. See also CMS, *supra* at 34, and GAO, *supra* at 7.

³² Off. of the Inspector General, U.S. Dep’t of Labor, *Semiannual Report to Congress: April 1 – September 30, 2021*, available at <https://www.oig.dol.gov/public/semiannuals/86.pdf>.

³³ *Id.*

³⁴ Treasury Inspector General for Tax Administration, U.S. Dep’t of the Treasury, 2021-30-051, *The Earned Income Tax Credit Examination Compliance Strategy Can Be Improved*, Sept 2021, <https://www.treasury.gov/tigta/auditreports/2021reports/202130051fr.pdf>.

³⁵ Treasury Inspector General for Tax Administration, U.S. Dep’t of the Treasury, 2021-40-036, *Improper Payment Rates for Refundable Tax Credits Remain High* (May 10, 2021), available at <https://www.treasury.gov/tigta/auditreports/2021reports/202140036fr.pdf>.

³⁶ *Id.*

³⁷ Off. of the Inspector General, Small Business Administration, *COVID-19 EIDL Program Recipients on the Department of Treasury’s Do Not Pay List* (Nov. 30, 2021), at <https://www.sba.gov/sites/default/files/2021-11/SBA%20OIG%20Report%2022-06.pdf>.

³⁸ GAO, *Supra*, at 26.

³⁹ GAO has estimated that the government could save billions of dollars by reconciling duplicative and overlapping missions across agencies. GAO-19-285SP, Report on Opportunities to Reduce Duplication, Fragmentation, and Overlap (2019), <https://www.gao.gov/products/gao-19-285sp>.

⁴⁰ Pub. L. No. 111-352. The law also required OMB to create a single, comprehensive website to house this information, which was published in limited capacity in 2013 and is now largely defunct. https://obamaadministration.archives.performance.gov/s3fs-public/files/Federal_Program_Inventory_Fact_Sheet_.pdf.

⁴¹ *Supra*, at 15 and U.S. Senate Comm. On Homeland Security & Governmental Aff., Subc. On Federal Spending Oversight and Emergency Management, Hearing on Review of GAO’s Annual Duplication Report, May 21, 2019, <https://www.hsgac.senate.gov/subcommittees/fso/hearings/review-of-gaos-annual-duplication-report> and Press Release, *Senators Lankford Hassan, Johnson, Sinema, Ernst Introduce Taxpayers Right-to-Know Act*, July 18, 2019, <https://www.hsgac.senate.gov/subcommittees/fso/media/senators-lankford-hassan-johnson-sinema-ernst-introduce-taxpayers-right-to-know-act>. The Competitive Enterprise Institute (CEI) found inconsistent accounts of the number of agencies and departments reported across the federal bureaucracy, due to the lack of an authoritative list. Clyde Wayne Crews, CEI, *Nobody Knows How Many Federal Agencies Exist*, (2015), <https://cei.org/blog/nobody-knows-how-many-federal-agencies-exist>.

⁴² The DATA Act (Pub. L. No. 113-101) and the Foundations for Evidence-Based Policymaking Act (Pub. L. No. 115-435) represent such examples of recently enacted law that need to be fully implemented. See also Demian Brady, Nat’l Taxpayers Union Foundation, *Taxpayers Right-to-Know Act Would Ease Completion of an Inventory of Federal Programs*, 2020, <https://www.ntu.org/foundation/detail/taxpayers-right-to-know-act-would-ease-completion-of-an-inventory-of-federal-programs>.



DC STATEHOOD FOR DEMOCRATIC RULE

“...In questions of power then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.” – Thomas Jefferson.

The Constitution establishes the nation’s capital as a district, not a state. Unfortunately, Democrats refuse to “bind down from mischief” in their pursuit of political power. Instead, Democrats support a nationally unpopular strategy to secure single-party rule by admitting the U.S. capital as a state. Congress must oppose H.R. 51, the Washington D.C. Admission Act, which would cede portions of the District of Columbia to the new state of Washington, Douglass Commonwealth.

A 2021 *Rasmussen* poll found D.C. statehood is unpopular with 55% of Americans.¹ Previous polls suggest this opposition is historically consistent, with about 55% opposed in 1989 and 1992.² According to *FiveThirtyEight*, major drivers may be Americans’ opposition to changing the “makeup of Congress” and rejection of establishing a state in the seat of government.³ A record number of Democrats have cosponsored D.C. statehood in the 117th Congress.⁴

According to Judiciary Committee Ranking Member Jim Jordan (R-OH), “the Federal Government would be entirely dependent upon the new state of Washington, D.C., for water, for utilities, for infrastructure, communications, even police and fire services. By virtue of this relationship, this new state would have incredible power over the other states.”⁵

- **The Constitution and the Founding Fathers established a District to house the Federal Government**
 - Article 1, Section 8, Clause 17 of the Constitution establishes a neutral district under the exclusive authority of Congress. This allows the nation’s representatives to meet, debate, and vote on equal ground.
 - In Federalist No. 43, James Madison warns of the consequences of statehood in the nation’s capital, “not only the public authority might be insulted and its proceedings interrupted with impunity; but a dependence of the members of the general government on the State comprehending the seat of the government, for protection in the exercise of their duty, might bring on the national councils an imputation of awe or influence.”
 - The 23rd Amendment grants D.C. three electoral college votes in presidential races, the equivalent of the least populous state. The Congressional Research Service reports that residents of the White House would remain residents of the District of Columbia under H.R. 51, not the Douglass Commonwealth.⁶ Although the bill authorizes expedited consideration to repeal the 23rd Amendment, a successful repeal requires passing a constitutional amendment.⁷
- **D.C. Statehood breaks historic precedent to balance partisan power.**
 - The U.S. “hasn’t admitted new states since 1959, and the admission of Hawaii and Alaska that year was designed to balance what was at the time one new Republican-leaning state with one Democratic state. The D.C. and Puerto Rico statehood movements are naked attempts to enlarge the Democrats’ Senate

majority.”⁸

- “Even after the Civil War, states were often admitted two-by-two in Noah’s Ark fashion to preserve political equilibrium...In 1888, Democrats proposed admitting four states — Montana and New Mexico were presumed to favor Democrats, Dakota and Washington were counted in the Republican column.”⁹
- In 2009, Congress debated adding a House seat in Utah to balance political representation by adding a D.C. House seat.¹⁰
- **D.C. Statehood breaks historic precedent to balance partisan power.**
 - D.C. Democrats would secure two U.S. Senate seats and a seat in the House of Representatives as a new state. Democrat pro-abortion,¹¹ gun control,¹² and electoral reform interest groups claim statehood as a priority to secure political victories.¹³
 - The District is not currently self-sustainable. In FY2020, D.C. requested \$15.5 billion from Congress, and local revenue sources only account for half of D.C.’s funding sources.¹⁴
 - “Taxpayers nationwide currently foot the bill for the D.C. courts, unfunded pension liabilities, and the care and custody of D.C. prisoners. The District also receives other subsidies from the Federal Government, including \$45 million for the improvement of D.C. public school system.”
 - Democrats appear to acknowledge statehood fiscal challenges in the bill text. H.R. 51 would continue federal funding for these many services, including employee benefits, agencies, and college tuition assistance, until the commonwealth certifies that it is prepared to take over the authorities and responsibilities to conduct its affairs. Non-Democrat voters living in other states would therefore continue to fund the D.C. Democrat priorities they oppose.
- **Democrats are not motivated by representation for D.C. residents**
 - If H.R. 51 was enacted, the new Washington, Douglass Commonwealth state would replace Rhode Island as the geographically smallest state in the Union,¹⁵ with the third-lowest population count.¹⁶ It would also be the sole state with no rural population.¹⁷ Establishing statehood based solely on population size disregards other cities and counties – such as Los Angeles County, CA, Harris County, TX, or New York City, NY – with a population higher than D.C.
 - Congress has more precedent to secure state representation for D.C. residents by returning the land to Maryland and Virginia. The Alexandria Retrocession of 1846, for example, reversed Virginia’s cessation of land located south of the Potomac River to D.C.¹⁸

Publ. September 08, 2021

¹ 55% Oppose D.C. Statehood. Rasmussen Reports. March 1, 2021.

https://www.rasmussenreports.com/public_content/politics/general_politics/february_2021/55_oppose_d_c_statehood

² Erin Doherty. Why Don’t Americans Want D.C. To Be A State. FiveThirtyEight. July 19, 2019. <https://fivethirtyeight.com/features/why-dont-americans-want-d-c-to-be-a-state/>. Moreover, Congress passed an amendment in 1978 granting congressional representation to D.C., which failed after only 16 states ratified it.

³ *Id.*

⁴ 214 House Democrats are cosponsors of H.R. 51 at the time of this brief.

⁵ H.R. 5151: Making D.C. the 51st State. Committee on Oversight and Reform. 116th Congress.

<https://www.govinfo.gov/content/pkg/CHRG-116hrg37974/html/CHRG-116hrg37974.htm>

⁶ Nina Burleigh. Biden and Democrats control Washington. And D.C. statehood should come next. NBCNews. February 8, 2021.

<https://www.nbcnews.com/think/opinion/biden-democrats-control-washington-d-c-statehood-should-come-next-ncna1257076> and Benjamin Wofford. Would DC Statehood Also Give the Trumps Three Electoral Votes? Washingtonian. August 10, 2020.

<https://www.washingtonian.com/2020/08/10/would-dc-statehood-also-give-the-trumps-control-of-three-electoral-votes/> and Mikaela Lefrak. 7 Reasons Why Some D.C. Residents Are Voting Against Statehood. WAMU. November 7, 2016.

https://wamu.org/story/16/11/07/why_some_dc_residents_are_voting_against_statehood/ and <https://docs.house.gov/meetings/GO/GO00/20190919/109960/HHRG-116-GO00-Wstate-ThomasK-20190919.pdf>

⁷ A constitutional amendment requires two-thirds majority in the House and Senate to pass, plus ratification by the states.

⁸ The Editorial Board. Pelosi’s Top Priority: Consolidating Power. The Wall Street Journal. January 14, 2021.

<https://www.wsj.com/articles/pelosi-top-priority-consolidating-power-11610667245> and Timothy Carney. Why Puerto Rico statehood makes much more sense to the public than does DC statehood. American Enterprise Institute. November 3, 2020. <https://www.aei.org/oped/why-puerto-rico-statehood-makes-much-more-sense-to-the-public-than-does-dc-statehood/>

⁹ After Republicans swept the congressional elections, “Democrats worried that Republicans might admit only two Republican states, so they agreed...Congress would admit one Democratic state (Montana), and three Republican ones” with Washington and the split Dakota territories, admitting New Mexico in 1912. https://newsadvance.com/opinion/editorial/bring-back-the-state-of-franklin/article_45cfba83-fd2a-58c1-a15e-3bb177be8d35.html and <https://www.vox.com/the-highlight/2019/9/18/20863026/dc-statehood-george-floyd-puerto-rico-statehood>

¹⁰ <https://www.vox.com/the-highlight/2019/9/18/20863026/dc-statehood-george-floyd-puerto-rico-statehood>

¹¹ <https://www.plannedparenthood.org/planned-parenthood-metropolitan-washington-dc/blog/access-to-abortion-and-dc-statehood-are-the-same-fight> and <https://dcabortionfund.org/2019/09/the-fight-for-d-c-statehood-is-a-fight-for-abortion-access/> and <https://www.bustle.com/p/why-dc-statehood-is-so-important-for-abortion-rights-18779761> and <https://thehill.com/opinion/civil-%20rights/451946-dc-statehood-is-necessary-to-fully-secure-right-for-women-to-choose> and <https://washingtoncitypaper.com/article/439857/republicans-are-worried-about-d-c-statehood/>

¹² <https://www.guns.com/news/2020/06/29/washington-d-c-statehood-is-a-gun-control-issue>

¹³ “Republicans aren’t wrong: Adding D.C. would be a power grab for Democrats, as much as it would be a bid to secure better representation for the people of the district. D.C. statehood could be the first test of how ruthlessly the Democrats plan to use the power they have won.” <https://www.nbcnews.com/think/opinion/biden-democrats-control-washington-d-c-statehood-should-come-next-ncna1257076> and Robert Reich: “This growing imbalance can be remedied by creating more states representing a larger majority of Americans. At the least, statehood should be granted to Washington, D.C.” <https://robertreich.org/post/633141398961520640> and <https://indivisible.org/democracy-guide> and <https://www.vox.com/the-highlight/2019/9/18/20863026/dc-statehood-george-floyd-puerto-rico-statehood> and <https://www.theatlantic.com/politics/archive/2021/02/will-dc-become-state-year/618065/> and <https://www.washingtonpost.com/opinions/2021/01/29/dc-statehood-filibuster/> and

<https://centerforpolitics.org/crystalball/articles/statehood-for-washington-d-c-and-puerto-rico-background-and-political-implications/> and <https://theweek.com/articles/922029/democrats-are- finally-taking-senate-problem-seriously> and

<https://nypost.com/2020/09/18/democrats-want-to-add-new-states-to-lock-in-senate-control- forever/> and

<https://www.am950radio.com/counter-republican-gerrymandering-with-dc-puerto-rico-statehood/> and

<https://fivethirtyeight.com/features/can-democrats-win-the-senate-by-adding-states-its-been-done-before/>

¹⁴ <https://www.govinfo.gov/content/pkg/CHRG-116hhrg37974/html/CHRG-116hhrg37974.htm>

¹⁵ <https://www.worldatlas.com>

¹⁶ Currently, there are about 712,000 residents in the District of Columbia. Wyoming has the lowest population count, with about 580,000 residents. <https://www.statista.com/statistics/183497/population-in-the-federal-states-of-the-us/>

¹⁷ <https://theweek.com/articles/922278/case-against-dc-statehood>

¹⁸ <http://www.virginiaplaces.org/boundaries/retrocession.html> and <https://www.wsj.com/articles/why-not-give-washington-d-c-back-to-maryland-11595440424>



CONGRESSIONAL REVIEW ACT

Congress has allocated considerable power to the Executive Branch by delegating rulemaking authority to federal agencies.¹ Today, federal regulations govern nearly every aspect of daily life.² With the stroke of a pen, President Biden expanded the administrative state's power to an historic level, by signing more Executive Orders (EO) in his first two weeks of office than President Franklin D. Roosevelt in his first month.³ These EO's carry the force of law over matters of climate change, immigration, education, and other areas.⁴ Congress has the authority to overturn federal agency rules through a disapproval resolution under the Congressional Review Act .

- Currently, the Congressional Review Act (CRA) is the most significant tool Congress has to counter agency rules which run afoul of congressional intent.⁵
 - For a regulation to be invalidated by the CRA, the U.S. Senate and House of Representatives must pass a joint resolution of disapproval either signed by the president, or override the president's veto, within 60 legislative days of the rule being transmitted to Congress.⁶
 - A total of 17 resolutions of disapproval have been enacted under the CRA, 16 of which passed in the 115th Congress.^{7,8}
- The CRA requires federal agencies to submit a copy of a rule to Congress and the Government Accountability Office (GAO) before the rule can take effect.^{9,10} The CRA's expedited procedures only become available once Congress receives the rule from the agency.
 - According to the Congressional Research Service (CRS), it is unlikely a court would compel an agency to submit a rule to Congress under the CRA, due to the law's provision on prohibiting judicial review.¹¹
 - Congress may seek an opinion from GAO on whether an action meets the definition of a rule, and therefore should have been submitted. If GAO determines an action should have been submitted, Congress can proceed with consideration of a joint resolution of disapproval.¹²
- **Senate Republicans can force a vote and send a message to the American people.**¹³
 - Fast Track to Senate Floor: A discharge petition signed by 30 senators can fast track consideration of the joint resolution from committee to the floor. This is effective after expiration of a 20-calendar day period after a final rule is received by Congress. Once a joint resolution reaches the Senate floor, any senator can require a vote on a motion to proceed to consideration.¹⁴
 - For example, Senate Democrats passed a successful CRA vote on a Department of Education rule during the 116th Congress, despite being in the minority party. However, President Trump vetoed the resolution.¹⁵
 - Rules for consideration in the House: "The CRA also provides expedited procedures that govern the consideration by either the House or Senate of a disapproval resolution received from the other chamber." When the Senate initiates the process, the joint resolution would be held at the desk in the House. The House may choose whether to take up the measure for consideration.¹⁶
 - According to CRS, "if either chamber rejects a CRA disapproval resolution on a major rule, it could have the effect of putting a regulation in force sooner than would otherwise be the case."¹⁷

- House Republicans may also consider introducing a joint resolution of disapproval to expose overreach and the harmful actions of the Biden Administration.¹⁸

Publ. August 25, 2021

¹ Congressional Research Service, IF10003, *An Overview of Federal Regulations and the Rulemaking Process* (2019)

<https://fas.org/sgp/crs/misc/IF10003.pdf>.

² Calculating the comprehensive cost of federal regulations on the economy is difficult. Estimations provided by the Mercatus Center, the Competitive Enterprise Institute, and the American Action Forum range from hundreds of billions to trillions of dollars. Clyde Wayne Crews Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State*, CEI.org (2019), <https://cei.org/sites/default/files/10KC2019.pdf>

³ FDR held the previous record for Executive Orders. <https://www.npr.org/2021/02/03/963380189/with-28-executive-orders-signed-president-biden-is-off-to-a-record-start>

⁴ <https://fee.org/articles/twenty-eight-executive-orders-in-only-two-weeks/> and <https://www.cnn.com/interactive/2021/politics/biden-executive-orders/index.html>

⁵ 5 U.S.C. § 801-808 (2012).

⁶ The joint resolution of disapproval must be passed with identical text. Veto overrides require a 2/3 majority of Congress.

⁷ Notably, the 16 resolutions of disapproval from 2017-8 took place under the Trump Administration, when Republicans held the majority for both chambers of Congress. Prior to the 115th Congress, the only successful CRA enactment to overturn a rule was in 2001. Congress has introduced over 200 joint resolutions of disapproval under the CRA pertaining to more than 125 rules.

<https://fas.org/sgp/crs/misc/R43992.pdf>

⁸ https://harvardlawreview.org/wp-content/uploads/pdfs/vol_122_the_mysteries.pdf. Further, the CRA is generally only effective to invalidate regulations when one political party takes control of both the White House and Congress and seeks to reverse rules promulgated towards the end of the prior administration. See House Republican Policy Committee policy guide, 116th Congress, entitled “Create Congressional Accountability for Major Rules.”

⁹ The CRA does not specify when an agency must submit a rule. Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

<https://www.gao.gov/legal/other-legal-work/congressional-reviewact#database>

¹⁰ According to a 2018 GAO report, 25% of “economically significant” regulations did not comply with the CRA, due primarily to agencies’ failure to observe the 60-day effective date delay for congressional review. GAO-18-183, *Federal Rulemaking: OMB Should Work with Agencies to Improve Congressional Review Act Compliance During and at the End of Presidents’ Terms* (2018), <https://www.gao.gov/assets/700/690624.pdf>.

¹¹ <https://www.crs.gov/Reports/IF11096?source=search&guid=713580bceac64cfab8aa933e5476a7b2&index=0> According to CRS, “Because the CRA’s special procedures are not triggered until rules are submitted to Congress, if an agency does not submit a rule to Congress, this could potentially frustrate Congress’s ability to review rules... Furthermore, because the CRA contains a provision barring judicial review, most courts have declined to review claims challenging an agency’s failure to submit a rule, making it unlikely that courts would compel an agency to submit a rule under the CRA even if it met the definition of rule.” <https://fas.org/sgp/crs/misc/R43992.pdf>

¹² <https://www.crs.gov/Reports/IF11096?source=search&guid=713580bceac64cfab8aa933e5476a7b2&index=0>

¹³ CRS specifically lists “drawing attention to a rule” as an advantage of the CRA. <https://fas.org/sgp/crs/misc/R43992.pdf>

¹⁴ Generally, if the motion to proceed is successful, the CRA disapproval resolution is subject to 10 hours of debate, with no amendments. “Should a majority of the Senate make a nondebatable motion to proceed to consider the disapproval resolution, debate is limited.” Under certain conditions, a joint resolution of disapproval cannot be filibustered. Notably, “unlike the regular legislative process, the CRA disapproval mechanism is available in the Senate only during certain statutorily specified time periods.”

<https://fas.org/sgp/crs/misc/R43992.pdf>

¹⁵ Notably, Democrats held the majority in the House. Further, 10 Republican senators joined the Democrats.

<https://www.congress.gov/bill/116th-congress/house-joint-resolution/76> and <https://www.yalejreg.com/nc/why-the-congressional-review-act-may-still-be-important-even-if-republicans-win-the-senate/>.

¹⁶ Further, the “House could take up the received Senate measure, should it choose to do so, under its normal parliamentary mechanisms without having a companion resolution submitted in the House.” <https://www.everycrsreport.com/reports/R43992.html>

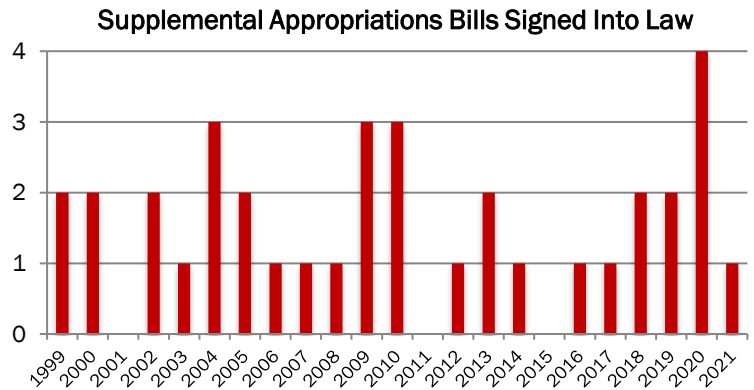
¹⁷ See 5 U.S.C. § 801(a)(5), provided by CRS at <https://fas.org/sgp/crs/misc/R43992.pdf>

¹⁸ The CRA does not authorize fast track procedures for committee and initial floor consideration in the House. “In every case in which the House has considered a CRA disapproval resolution on the floor, it has done so under the terms of a closed special rule reported by the Rules Committee and adopted by the House... When considered under the terms of a special rule, the House minority leader or [a] designee is guaranteed the opportunity to offer a motion to recommit the joint resolution, with or without instructions.” When a measure is considered under the terms of a closed special rule, no floor amendments are in order. <https://fas.org/sgp/crs/misc/R43992.pdf>. Unfortunately, House Democrats passed expansive rules overhauling institutional minority procedural rights in the 117th Congress, particularly the motion to recommit. The House rules eliminate MTRs with instructions, and time for debate on the MTR.



SUPPLEMENTAL EMERGENCY APPROPRIATIONS ABUSE

“Never allow a good crisis to go to waste.”¹ When President Obama’s former chief of staff Rahm Emanuel said this, it became the rallying cry for Congress to abuse the budget process. Repeatedly Congress tucks in billions of unrelated spending projects in every supplemental appropriations bill, which have averaged more than one per year over the past decade.² For instance, in the supplemental for Hurricane Sandy relief, Congress boosted salaries for the FBI, among other agencies not handling disaster mitigation.³ These supplementals contribute to runaway deficit spending, which leads to either steep tax increases, less spending power due to inflation – disproportionately hurting the poor and retired – or leaves our children and grandchildren to foot the bill.⁴



- **Supplementals have evaded budget limits.**

- Due to concern over the rising debt, Congress passed the Balanced Budget and Emergency Deficit Control Act of 1985, establishing deficit limits over a six year period.⁵ More recently, the Budget Control Act of 2011 established limits on discretionary spending for fiscal years 2012 to 2021.⁶
- Although normal supplementals are subject to these budget limits, Congress created a loophole for itself by allowing supplemental spending to be designated as “emergency” spending, exempt from budget limits.⁷
- Consequently, almost 92% of supplemental spending from 1991 to 1999 was designated as emergency spending and eluded budget limits.⁸ The total cost of supplementals in 2020 alone ballooned to over \$3 trillion.⁹

- **Congress abuses “emergency” designations to spend beyond what’s permitted.**

- When Congress designates the supplementals as “emergency” spending, the bills circumvent budget limits even if the funds in question are not targeted to the emergency.
- The CARES Act, which evaded budget limits on relief for the COVID-19 crisis, included \$75 million for the National Endowment for the Arts and another \$75 million for the National Endowment for the Humanities.¹⁰ These are just two of many examples of funding intended to be included in regular appropriations bills.
- Supplementals occasionally include budget cuts in other areas but rarely offset the cost of the entire bill.¹¹ Therefore, America is borrowing and paying interest on this money.
- While disasters and other emergencies are difficult to predict, Congress should act responsibly by limiting emergency spending to the crisis at hand and not use the crisis as an excuse to spend further on unrelated political priorities.
- Congress should also budget for actual emergency spending in advance by setting aside “rainy day”

funds in the twelve regular appropriations bills passed each year, just like the average American is required to do with their own budget.

Publ. July 28, 2021

¹ Rahm Emanuel. Let's make sure this crisis doesn't go to waste. The Washington Post. March 20, 2020. <https://www.washingtonpost.com/opinions/2020/03/25/lets-make-sure-this-crisis-doesnt-go-waste/>

² Appropriations Status Table. Congressional Research Service. <https://crsreports.congress.gov/AppropriationsStatusTable>

³ Pub. L. No. 116-136

⁴ Supplemental Appropriations in the 1990s. The Congressional Budget Office. March 2001. <https://www.cbo.gov/system/files?file=2018-07/1990s.pdf>

⁵ Megan Lynch. Statutory Budget Controls in Effect Between 1985 and 2002. Congressional Research Service. July 1, 2011. <https://fas.org/sgp/crs/misc/R41901.pdf>

⁶ James Saturno. Emergency Spending: Statutory and Congressional Rules. The Congressional Research Service. July 24, 2007. https://www.everycrsreport.com/files/20070724_RS21035_9c6b2f810602bf1124c373ac62c6b1af2bea814c.pdf

⁷ *Id.*

⁸ Supplemental Appropriations in the 1990s. The Congressional Budget Office. March 2001. <https://www.cbo.gov/system/files?file=2018-07/1990s.pdf>

⁹ <https://www.pgpf.org/blog/2021/01/heres-everything-congress-has-done-to-respond-to-the-coronavirus-so-far>

¹⁰ Pub. L. No. 113-2

¹¹ William Painter. Offsets, Supplemental Appropriations, and the Disaster Relief Fund: FY1990-FY2013. The Congressional Research Service. December 4, 2012. <https://fas.org/sgp/crs/misc/R42458.pdf>



OPPORTUNITY ZONES

Opportunity Zones are economically distressed areas where new investments receive preferential tax treatment.¹ They have generated billions of dollars of new investments in communities that have historically experienced limited access to capital and significant economic difficulties.

These zones were created in the Tax Cuts and Jobs Act, which was signed into law by President Trump on December 22, 2017.² The Department of Treasury designated 8,766 individual census tracts across all 50 states, six territories, and the District of Columbia as Opportunity Zones.³

- **Opportunity Zones give access to capital to people who need it.**
 - In 2014, Black and Hispanic small business owners were more likely to be turned down for bank loans than business owners from all other racial groups, facing rejection rates of 53.4% and 39.3% respectively.⁴
 - Based on recent Census data, Opportunity Zones have an average poverty rate of nearly 28%.⁵
 - 57% of residents are non-white minorities. 23% are Black, and 26% are Hispanic.
 - Median family income is, on average, \$47,316, and 21% of adults in Opportunity Zones lack a high school diploma.
 - Opportunity Zones, on average, have higher poverty rates, lower median incomes, higher minority population shares, and a higher percentage of adults without a high school diploma than other low-income areas not designated as Opportunity Zones.⁶
- **Opportunity Zones have spurred economic development of designated communities.**
 - Qualified Opportunity Funds, which are required to hold 90 percent of their assets in Opportunity Zones,⁷ raised \$75 billion in private capital in 2019.⁸
 - An estimated 70% of this invested capital, or \$52 billion, would not have been invested without the tax incentives.⁹
 - Housing values in Opportunity Zones increased by 1.1%, leading to an estimated \$11 billion increase in wealth for the 47% of residents who are homeowners.¹⁰
- **President Trump increased job opportunity in Opportunity Zones.**
 - On August 24, 2020, President Trump directed agencies to give preference to Opportunity Zones when locating federal facilities.¹¹
 - Executive orders under previous administrations instructed federal agencies to grant priority consideration to central business districts.
 - These districts often comprised wealthy urban centers that were not in need of federal investment, at a cost to the taxpayers
 - Bringing federal facilities to Opportunity Zones will also increase job opportunities to residents of these areas.

¹ “Opportunity Zones Frequently Asked Questions,” Internal Revenue Service. <https://www.irs.gov/credits-deductions/opportunity-zones-frequently-asked-questions> (Last accessed September 17, 2020).

² “Opportunity Zones” U.S. Economic Development Administration. Accessed 09/29/20 <https://www.eda.gov/opportunity-zones/>

³ “The Impact of Opportunity Zones: An Initial Assessment” Accessed 09/16/20 at <https://www.whitehouse.gov/wp-content/uploads/2020/08/The-Impact-of-Opportunity-Zones-An-Initial-Assessment.pdf>

⁴ “Availability of Credit to Small Businesses – September 2017” Board of Governors of the Federal Reserve System. Accessed 09/15/20 <https://www.federalreserve.gov/publications/2017-september-availability-of-credit-to-small-businesses.htm>

⁵ *Ibid*

⁶ “Opportunity Zones: Facts & Figures” Economic Innovation Group. Accessed 09/15/20 <https://eig.org/opportunityzones/facts-and-figures>

⁷ H.R. 1 – An Act to provide reconciliation (...) Accessed 09/16/20 <https://www.congress.gov/bill/115th-congress/house-bill/1/text>

⁸ “The Impact of Opportunity Zones: An Initial Assessment” Accessed 09/16/20 at <https://www.whitehouse.gov/wp-content/uploads/2020/08/The-Impact-of-Opportunity-Zones-An-Initial-Assessment.pdf>

⁹ *Id.*

¹⁰ *Id.*

¹¹ “Executive Order on Targeting Opportunity Zones and Other Distressed Communities for Federal Site Locations” Executive Orders. Accessed 09/17/20 <https://www.whitehouse.gov/presidential-actions/executive-order-targeting-opportunity-zones-distressed-communities-federal-site-locations/> and https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-lifting-driving-new-prosperity-previously-forgotten-american-communities/?utm_source=2019+House+GOP+Staff+List&utm_campaign=c97f4088d5-EMAIL_CAMPAIGN_2019_01_29_06_11_COPY_01&utm_medium=email&utm_term=0_a8407dc016-c97f4088d5-147384861.



THE FUTURE OF FANNIE AND FREDDIE

The familiar phrase “those who fail to learn from history are doomed to repeat it” often falls on deaf ears in our nation’s capital. Once again, this phrase rings true as Democrats advance socialist policies that will put Fannie and Freddie, the government-backed mortgage giants, at a higher financial risk.

BACKGROUND

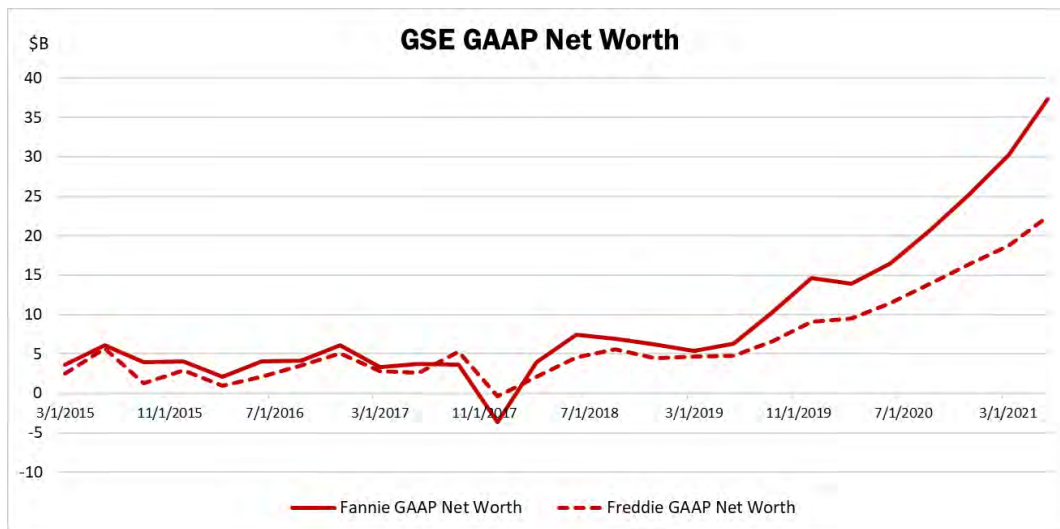
The Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) were once private enterprises created by Congress. During the housing crisis in 2008, they were bailed out by U.S. taxpayers and put into conservatorship by the Federal Housing Finance Administration (FHFA), which guarantees investors who buy the mortgage-backed securities will receive the principal and interest even if the borrowers default.¹ Despite one of the stated goals of conservatorship being to prepare for eventual exit, Fannie and Freddie remain in conservatorship after more than a decade, keeping the taxpayers on the hook for potential losses.²

- **The Biden Administration is politicizing FHFA.**

- On June 23, 2021, the Supreme Court ruled in *Collins v. Yellen* that the President has the authority to remove the FHFA Director, overturning the historical structure that only allowed the director to be removed before the end of their five-year term for cause. Less than 24 hours after the decision was issued, President Biden removed FHFA Director Mark Calabria from his post.³
- Although the Supreme Court decided that the president has the authority to remove the FHFA Director, it is clear the motivation of the suit was a political and blatant effort to oust the Director of the independent federal agency so Biden could more easily push his woke housing agenda.⁴
- President Biden made this decision despite the fact he voted to make FHFA an independent agency to take it “out of politics” back in 2008.⁵

- **Fannie and Freddie’s exit from conservatorship looks farther away than ever.**

- Over the past few months, the Administration has been working to reverse actions former Director Calabria took to reduce the risk of the government-sponsored enterprises (GSEs) during his tenure.
- Under the leadership of Director Calabria, FHFA made the decision to require Fannie and Freddie to hold more capital so they could operate in a safe and sound manner if released from conservatorship and to reduce the risk to taxpayers, who would have to absorb potential losses of the GSEs in another crisis.⁶
- This decision put the GSEs on a stronger financial footing not seen in years by successfully reducing the leverage ratio of the GSEs by 75 percent and limiting their footprint, as seen by their increased net worth.⁷ This was also while overseeing the largest annual increase in homeownership among Black Americans.⁸



Source: Federal Housing Finance Agency

- Acting Director Sandra Thompson, Calabria's replacement, swiftly changed the course of the GSEs by amending the capital framework and suspending certain restrictions on the GSEs' risk taking.⁹
- Acting Director Thompson noted she believes it is FHFA's duty to ensure that all Americans have equal access to affordable housing. In her quest to achieve this goal that is not part of FHFA's mission statement, she is abandoning FHFA's actual stated mission that FHFA should ensure the regulated entities operate "in a safe and sound manner to serve as a reliable source of liquidity."¹⁰
- **The Biden Administration is setting the stage for another housing crisis.**
 - Throughout history, the government has used Fannie and Freddie to concentrate the risk of its housing policies and set up conditions for a record level of mortgage defaults.
 - For example, in 1968, the government took Fannie off budget and created Freddie in 1970 to fund a massive expansion of government subsidized housing. The U.S. Department of Housing and Urban Development's (HUD) program expanding the National Housing Act temporarily ended in 1973 in scandal when it contributed to the further deterioration of many city neighborhoods and left Fannie effectively insolvent by the early 1980s.¹¹
 - In the early 1990s through 2008, Fannie and Freddie were forced to take on risky loans after banks were pressured by the Clinton Administration using a provision in the 1977 Community Reinvestment Act to make subprime loans under the objective of "affordable housing."¹² In order to meet HUD's goals, Fannie and Freddie had to continuously reduce their mortgage standards.¹³
 - New research shows that mortgage risk rose steadily leading up to the 2008 housing crisis when the GSEs accounted for roughly 50% of the mortgage market, indicating their integral role in the crisis.¹⁴
 - Allowing the GSEs to buy riskier mortgage loans will incentivize banks to make it easier to buy a home, which will increase demand for housing or more expensive housing. Yet, this will not lead to lower housing prices or an improved housing supply, which is already under strain from high building material prices and labor shortages.¹⁵

POLICY SOLUTIONS

Fannie and Freddie should be released from conservatorship and returned to private ownership to ensure the taxpayers are not expected to finance another bailout if another housing crisis were to occur. To meet that goal, Fannie and Freddie must hold sufficient capital to absorb losses. In addition, Congress and the Biden Administration should not be incentivizing borrowers to buy more expensive homes than they are able to afford by increasing the GSEs' footprint and enabling further risk taking, which proved to be disastrous in the past.

¹ Mitchell Remy. Effects of Recapitalizing Fannie Mae and Freddie Mac Through Administrative Actions. Congressional Budget Office. August 2020. <https://www.cbo.gov/publication/56511>

² Conservatorship. Federal Housing Finance Agency. <https://www.fhfa.gov/Conservatorship>

³ Collins et. al. v. Yellen, Secretary of the Treasury, et al. October Term 2020. https://www.supremecourt.gov/opinions/20pdf/19-422_k537.pdf and Katy O'Donnell. Biden Removes FHFA director after Supreme Court ruling. Finance. June 23, 2021. <https://www.politico.com/news/2021/06/23/supreme-court-biden-fannie-mae-freddie-mac-housing-495673>

⁴ Jacob Passy. Supreme Court decision could help advance Biden's housing agenda—starting with the firing of the FHFA director. MarketWatch. June 23, 2021. <https://www.marketwatch.com/story/this-scotus-decision-could-pave-the-way-for-bidens-housing-agenda-11624466648>

⁵ Fannie Mae and Freddie Mac may be pilfered by government, Mark Calabria says. Fox Business. June 26, 2021. <https://www.foxbusiness.com/markets/freddie-mac-fannie-mae-mark-calabria>

⁶ Enterprise Regulatory Capital Framework. Federal Housing Finance Agency. June 30, 2020. <https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Enterprise-Regulatory-Capital-Framework.aspx>

⁷ Enterprise Minimum Capital Requirement & GAAP Net Worth. Capital Figures during Conservatorship – History Chart. <https://www.fhfa.gov/SupervisionRegulation/FannieMaeandFreddieMac/Documents/Capital-Figures-during-Conservatorship-History-Chart.pdf> and Thomas Wade. FHFA Releases Proposed GSE Capital Rule. American Action Forum. May 21, 2020. <https://www.americanactionforum.org/insight/fhfa-releases-proposed-gse-capital-rule/>

⁸ U.S. Census Bureau, Homeownership Rates by Race and Ethnicity: Black Alone in the United States [BOAAAHORUSQ156N], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/BOAAAHORUSQ156N>, October 15, 2021.

⁹ FHFA Issues Notice of Proposed Rulemaking to Amend the Enterprise Regulatory Capital Framework. Federal Housing Finance Agency. September 15, 2021. <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Issues-Notice-of-Proposed-Rulemaking-to-Amend-the-Enterprise-Regulatory-Capital-Framework.aspx> and FHFA and Treasury Suspending Certain Portions of the 2021 Preferred Stock Purchase Agreements. September 14, 2021. <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-and-Treasury-Suspending-Certain-Portions-of-the-2021-Preferred-Stock-Purchase-Agreements.aspx>

¹⁰ Sandra L. Thompson Announced as Acting Director of FHFA. Federal Housing Finance Agency. June 23, 2021. <https://www.fhfa.gov/Media/PublicAffairs/Pages/Sandra-L-Thompson-Announced-as-Acting-Director-of-FHFA.aspx> and FHFA AT-A-GLANCE. The Federal Housing Finance Agency. September 30, 2021. <https://www.fhfa.gov/AboutUs>

¹¹ Berry M. Flint. Mortgage Scandal in Detroit Could Cost U.S. \$200-Million. The New York Times. <https://www.nytimes.com/1971/12/04/archives/a-mortgage-scandal-in-detroit-could-cost-us-200million-us-may-lose.html> and Alex J. Pollock & Edward J. Pinto. The Next Housing Bust. Law & Liberty. September 6, 2021. <https://lawliberty.org/the-next-housing-bust/>

¹² Edward Pinto. Acorn and the Housing Bubble. The Wall Street Journal. November 12, 2009. <https://www.wsj.com/articles/SB10001424052748703298004574459763052141456>

¹³ Alex J. Pollock & Edward J. Pinto. The Next Housing Bust. Law & Liberty. September 6, 2021. <https://lawliberty.org/the-next-housing-bust/>

¹⁴ Morris A. Davis, William D. Larson, Stephen D. Oliner, and Benjamin R. Smith. A quarter century of mortgage risk. American Enterprise Institute. May 2021. <https://www.aei.org/wp-content/uploads/2021/05/Mortgage-Risk-WP.pdf?x91208>

¹⁵ Lucia Mutikani. Labor, building material mortgages depress U.S. single-family housing starts. Macro Matters. September 21, 2021. <https://www.reuters.com/world/us/us-housing-starts-beat-expectations-august-2021-09-21/>